

# **THE DEPARTMENT OF JUSTICE'S INTERNAL CONTROLS OVER TERRORISM REPORTING**

**U.S. Department of Justice  
Office of the Inspector General  
Audit Division**

**Audit Report 07-20  
February 2007**

# **THE DEPARTMENT OF JUSTICE'S INTERNAL CONTROLS OVER TERRORISM REPORTING**

## **EXECUTIVE SUMMARY**

Since the September 11, 2001, terrorist attacks, the Department of Justice's (Department) highest priority has been to deter, prevent, and detect future terrorist acts. In part, the Department measures the success of its counterterrorism efforts by reporting hundreds of terrorism-related statistics in its performance plans and statistical reports, such as the:

- number of individuals charged as a result of terrorism investigations,
- number of terrorism convictions,
- number of terrorism-related threats to transportation and facilities, and
- number of terrorism-related threats to people and cities.

Congress and the Department management also use terrorism-related statistics to make operational and funding decisions for Department counterterrorism activities, and to support the Department's annual budget requests.<sup>1</sup> For these and other reasons, it is essential that the Department report accurate terrorism-related statistics.

The Department's Office of the Inspector General (OIG) initiated this audit to determine if Department components and the Department as a whole gather and report accurate terrorism-related statistics.

### **Terrorism-Related Statistics Reported by the Department**

In transforming its mission after the terrorist attacks of September 11, 2001, the Department established preventing terrorism and promoting America's security as its primary strategic goal. The Department relies on its components, such as the Federal Bureau of Investigation (FBI), the Criminal Division, the Executive Office for United States Attorneys (EOUSA), and the United States Attorney's Offices (USAO), to implement its counterterrorism strategies. The Department and its components collect a

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<sup>1</sup> The Department received \$3.6 billion in Fiscal Year (FY) 2006 for counterterrorism activities, an increase of almost 400 percent over the \$737 million received in FY 2001.

variety of terrorism-related statistics measuring these counterterrorism efforts.

We identified the terrorism-related statistics reported by the Department and its components by:

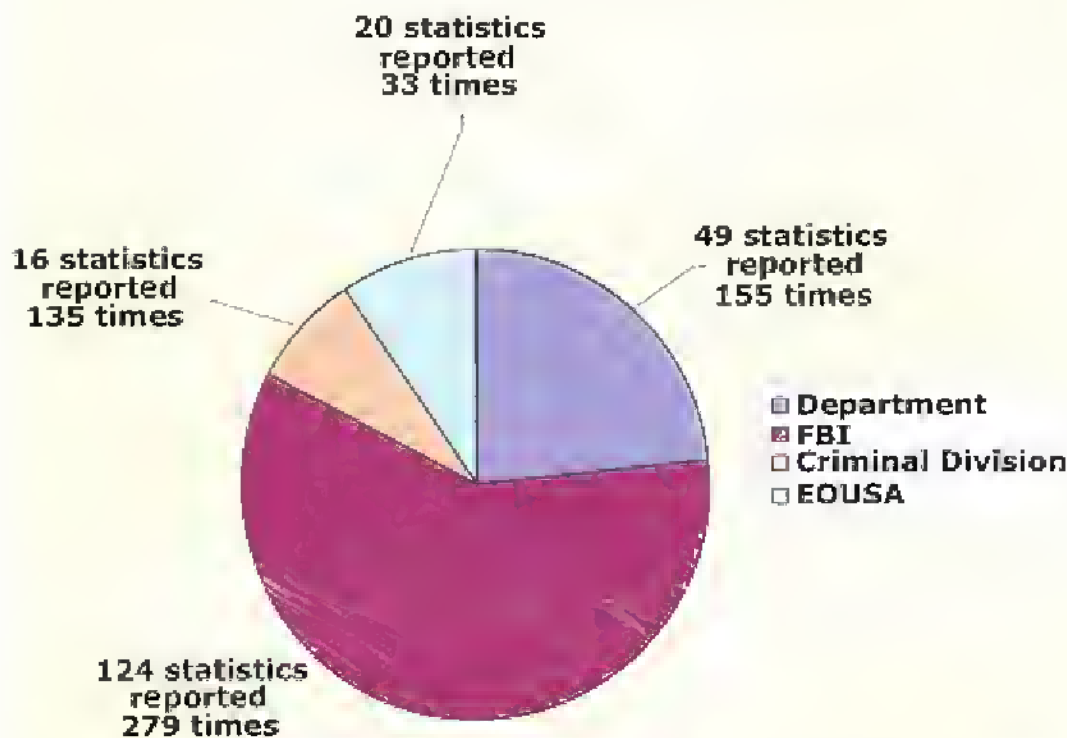
- interviewing officials from the Department, the FBI, the Criminal Division, and EOUSA;
- analyzing budget submissions, congressional testimony, performance plans, and other documents maintained by the Department and its components; and
- viewing the website maintained by the Department at [www.lifeandliberty.gov](http://www.lifeandliberty.gov) to keep the public informed of the Department's counterterrorism efforts.

In total, we identified 209 unique terrorism-related statistics that were reported by the Department and its components 602 times from October 1, 2000, through September 30, 2005.<sup>2</sup> The following chart shows which components reported these 209 statistics.

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<sup>2</sup> While some terrorism-related statistics were reported only once, most were reported multiple times. Many of the statistics identified were also reported by more than one agency. We calculated the total times the statistic was reported by adding the number of times the statistic was reported by both the primary reporting agency and by other agencies.

**Terrorism-related Statistics Reported by the  
Department and its Components from  
October 1, 2000, through September 30, 2005**



Source: Interviews with Department officials and Department documents

In testing the accuracy of these terrorism statistics, we excluded from the 209 statistics 17 that were generated by agencies outside the Department. For our initial testing of the remaining 192 statistics, we interviewed Department officials from the FBI, the Criminal Division, EOUSA, and other Department agencies to determine whether internal controls were in place to ensure the 192 statistics were accurately gathered, classified, and reported.

Through these interviews, we learned that the collection and reporting of terrorism-related statistics within the Department is decentralized and haphazard. Often, the official who reported the statistic gathered it through telephone requests or e-mail to other Department staff. Also, for many of the statistics reported, Department officials either had not established

internal controls to ensure the statistics were accurately gathered, classified, and reported, or did not document the internal controls used.

After our initial review of the 192 statistics, we excluded 133 statistics from our detailed review because: (1) the sources of the statistics could not be determined;<sup>3</sup> (2) the statistics or supporting systems were previously reviewed by the OIG and recommendations were made to correct deficiencies identified; and (3) the statistics were used for informational as opposed to operational purposes.<sup>4</sup>

Of the remaining 59 terrorism-related statistics, we selected 26 to test whether the statistics were accurate. We selected these 26 statistics based on our assessment of the significance of the statistic to the Department's counterterrorism efforts and based on the risk associated with reporting the statistic inaccurately.<sup>5</sup> The statistics selected included 10 from the FBI (reported 13 times), 11 from the USAOs (reported 20 times), and 5 from the Criminal Division (reported 9 times).

To test the accuracy of these 26 statistics, we analyzed documentation and conducted interviews with Department officials to determine if the information reported for each statistic was accurate. In some cases we reviewed documentation for each item counted in the statistic reported. In other cases we reviewed documentation for a sample of the items counted.<sup>6</sup>

As summarized in the following table, we determined that the FBI, EOUSA, and the Criminal Division did not accurately report 24 of the 26 statistics we reviewed.

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<sup>3</sup> They include the number of: (1) disrupted donors related to terrorist financing, (2) weapons of mass destruction cases initiated by the FBI and supported by the Hazardous Material Response Unit, and (3) number of subpoenas and search warrants issued to gather and cultivate detailed intelligence on terrorists in the United States. The statistics for which sources could not be determined are listed in Appendix II.

<sup>4</sup> Informational purposes included statistics used in speeches, press releases, publications, and websites. Operational purposes included statistics used in budget requests, performance plans, and annual financial statements and statistical reports.

<sup>5</sup> More details of our selection methodology are contained in Appendix I.

<sup>6</sup> For those statistics where we reviewed a sample of items counted, the number supported could be less and the difference could be more based on a 100-percent review of transactions reported.

**Summary Results: Review of Selected  
Terrorism-Related Statistics Reported by  
the Department and its Components**

<b>Primary Reporting Agency</b>	<b>Number of Statistics Not Accurately Reported</b>	<b>Number of Times Inaccurately Reported</b>
<b>FBI</b>	8 of 10	11 of 13
<b>EOUSA (USAOs)</b>	11 of 11	20 of 20
<b>Criminal Division</b>	5 of 5	7 of 9
<b>Totals</b>	24 of 26	38 of 42

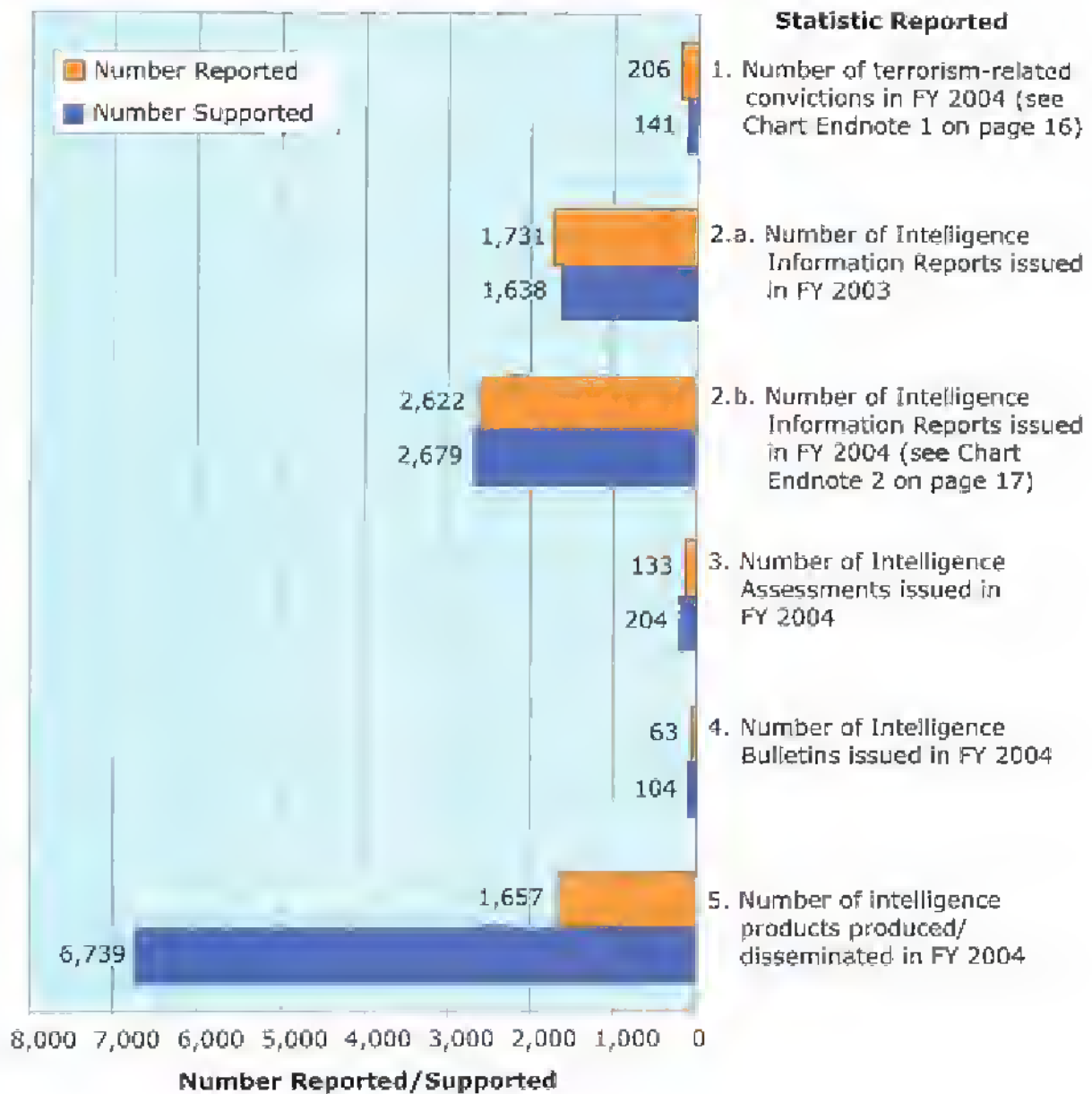
Source: OIG's conclusion based on interviews with Department officials and analyses of Departmental records

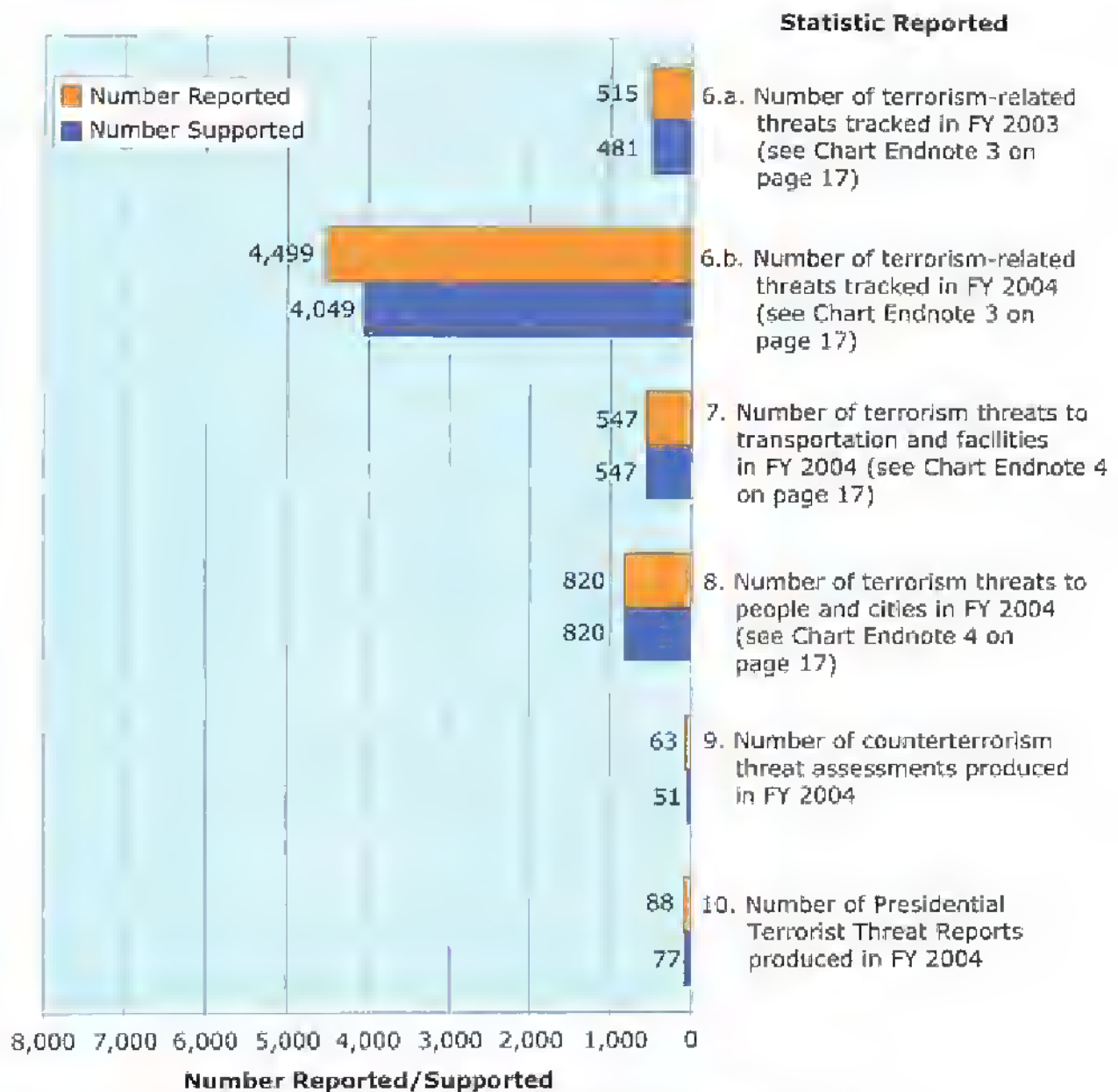
Some of these statistics were significantly overstated or understated, while others were overstated or understated by minor amounts. The statistics were inaccurately reported for various reasons, including that the components: (1) could not provide support for the numbers reported for the statistics; (2) could not provide support of the terrorism link used to classify statistics as terrorism-related; and (3) could not provide documentation to show that some items counted in the statistic reported occurred in the period reported or the evidence provided showed that some items counted in the statistic reported did not occur in the period reported. We summarize our findings by component in the following sections.

**FBI Terrorism Statistics**

As shown in the following chart, the FBI did not accurately report 8 of the 10 FBI statistics we reviewed.

## OIG Analysis of Terrorism-Related Statistics Reported by the FBI





Source: FBI budget requests and performance plans, OIG interviews with FBI staff, and analysis of documents provided by FBI staff

As shown in the previous charts, we found that the FBI significantly overstated the number of:<sup>7</sup>

<sup>7</sup> We considered the misreporting of a statistic as significant if the statistic was either overstated or understated by 10 percent or more.



- number of terrorism-related convictions during FY 2004,
- Counterterrorism Threat Assessments issued during FY 2004, and
- Presidential Terrorist Threat Reports issued during FY 2004.

By contrast, the FBI significantly understated the number of:

- Intelligence Assessments issued during FY 2004,
- Intelligence Bulletins issued during FY 2004,
- Intelligence products produced/disseminated during FY 2004, and
- terrorist threats tracked during FY 2003 and FY 2004.

We determined that the FBI statistics were inaccurate for the following reasons.

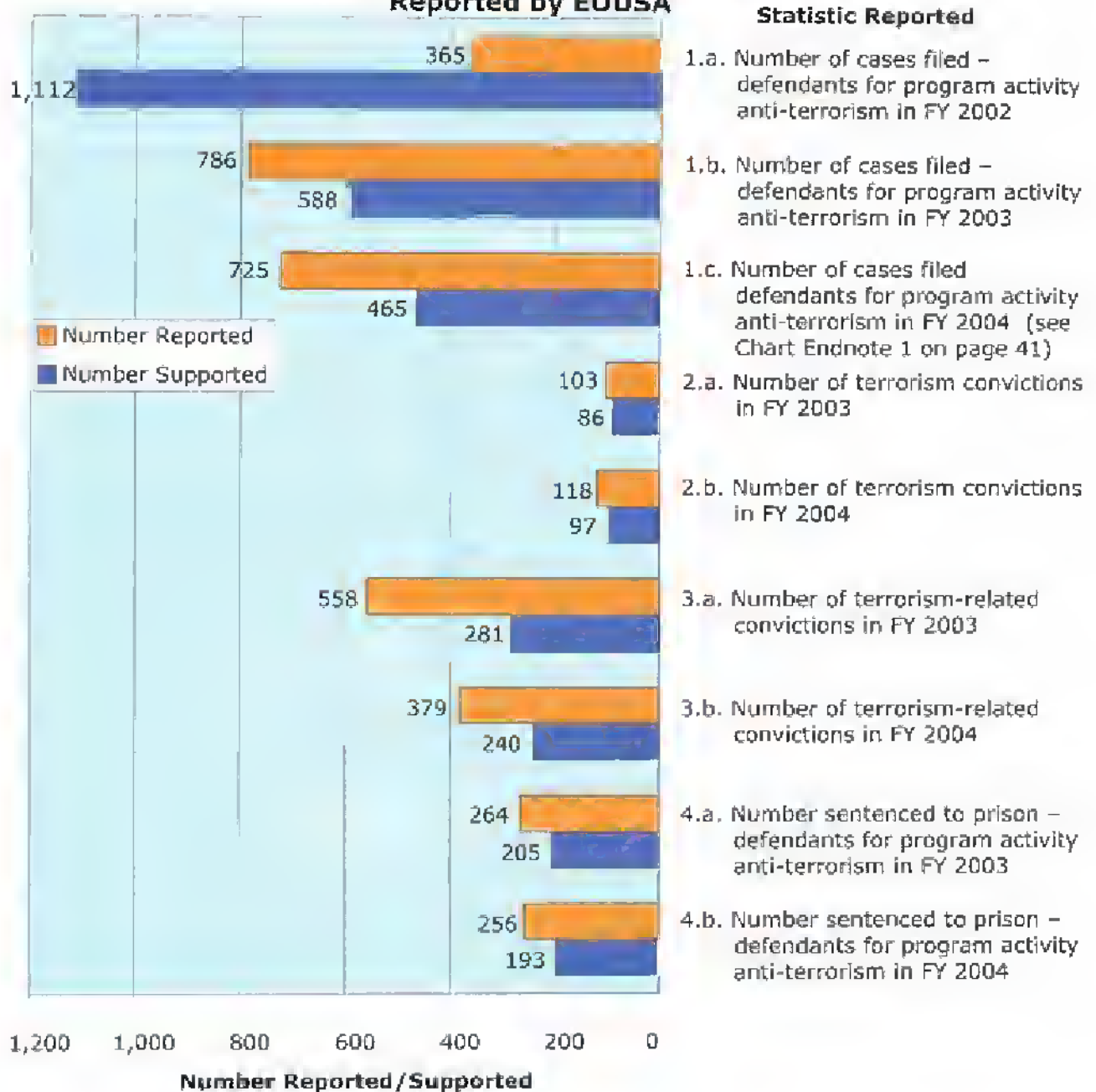
- The number of terrorism-related convictions was overstated because the FBI initially coded the investigative cases as terrorism-related when the cases were opened, but did not recode cases when no link to terrorism was established.
- The differences between the numbers of Intelligence Information Reports reported in the budget and performance plan and the FBI's database likely resulted from the wording of how the database was queried by the FBI. An FBI official also told us that the number of Intelligence Information Reports reissued, corrected, and recalled, or additional information added to the Intelligence Information Reports, could also have affected the accuracy of the number of Intelligence Information Reports tracked in the database.
- The inaccurate reporting of the number of Intelligence Assessments issued likely occurred because: (1) FBI staff did not enter Intelligence Assessments in the database in a timely manner, and (2) the database was queried by calendar year or other time periods instead of by fiscal year.
- The inaccuracies in the number of Intelligence Bulletins issued were attributable to a lack of formalized procedures on how to collect, verify, and report the Intelligence Bulletins.

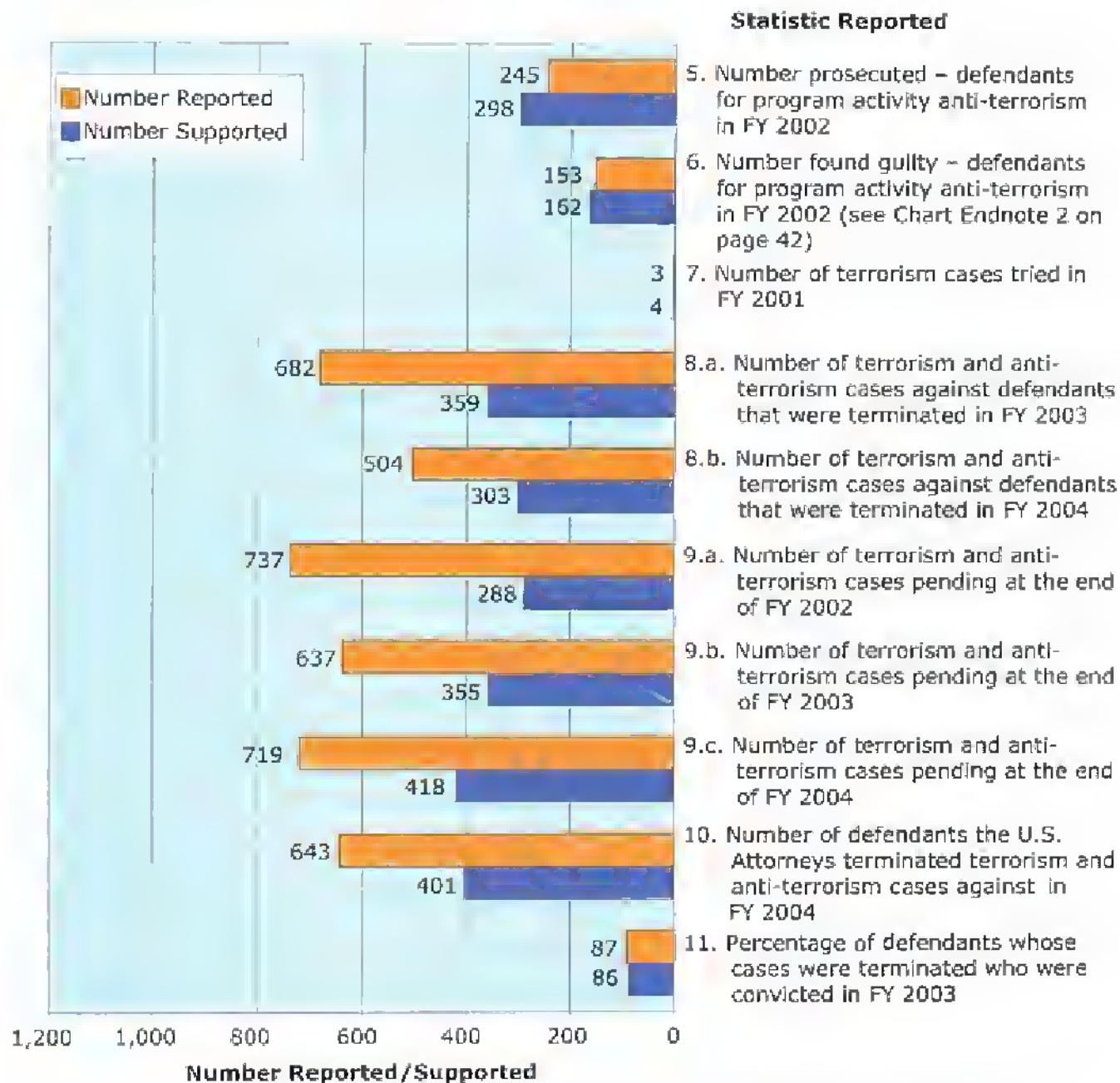
- The inaccurate reporting of the number of intelligence products issued occurred because no internal controls are in place for gathering and verifying the number of Intelligence Bulletins, Intelligence Assessments, and Intelligence Information Reports that have been posted to websites by the four FBI divisions. In addition, the FBI did not validate the accuracy of the information posted by the divisions to ensure that all the intelligence information products are posted.
- The number of terrorism threats tracked in FY 2003 and 2004 was inaccurate primarily because the reported statistics included threats that were counted multiple times. In addition, according to an FBI official, the total threats tracked during FY 2003 and FY 2004 did not include about 60 percent of the threats tracked by FBI field offices, the FBI's Counterterrorism Watch Unit, or the FBI's International Terrorism Operations Sections.
- The number of threat assessments issued was inaccurately reported because the FBI inadvertently reported some assessments issued during FY 2003 as being issued during FY 2004.
- The number of Presidential Terrorist Threat Reports issued was overstated because the spreadsheet database appears to have been queried by calendar year or for another time period instead of by fiscal year, and the request for the statistic was worded in a way that could produce different answers.

### **EOUSA and USAO Terrorism Statistics**

As shown in the following chart, EOUSA and the USAOs did not accurately report the 11 EOUSA and USAO statistics we reviewed.

# **OIG Analysis of Terrorism-Related Statistics Reported by EOUSA**





Source: EOUSA and USAO budgets, annual statistical reports, and Legal Information Office Network System (LIONS) data; OIG interviews with EOUSA and USAO staff; and analysis of documents provided by EOUSA and USAO staff

We found that most of the inaccurate statistics occurred because the USAOs coded the statistical data as terrorism or anti-terrorism related but

did not support that a case showed any reasonable link to terrorist activity.<sup>8</sup> EOUSA's definition of the anti-terrorism program activity is not clear regarding the link to terrorism. The definition indicates the anti-terrorism program activity is meant to capture activity related to prevention or disruption of terrorist threats where the conduct is not obviously a crime of terrorism. However, the definition's two examples indicate that the subject, target, or defendant must be reasonably linked to a terrorist activity to record the case under the anti-terrorism program activity. Taken as a whole, we believe this definition establishes that a case or defendant must have some identifiable link to terrorism to be categorized as being "anti-terrorism."

EOUSA disagrees with our interpretation of the definition of the anti-terrorism program activity. EOUSA and USAO officials told us they believe they correctly reported defendants under the anti-terrorism program activity because almost all the defendants reported under this program activity were arrested as the result of either operations carried out to prevent terrorism or through Joint Terrorism Task Force (JTTF) activities.<sup>9</sup> For example, Operation Tarmac was a worksite enforcement operation launched in November 2001 at the nation's airports. During this operation, Department and other federal agents went into regional airports and checked the immigration papers of airport workers. The agents then arrested any individuals who used falsified documents, such as social security numbers, drivers' licenses, and other identification documents, to gain employment. EOUSA officials told us they believe these defendants are properly coded under the anti-terrorism program activity. We do not agree that law enforcement efforts such as these should be counted as "anti-terrorism" unless the subject or target is reasonably linked to terrorist activity.

We acknowledge that some law enforcement operations and the JTTF's focus originate in concerns regarding terrorism. In fact, with the

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<sup>8</sup> The LIONS Manual states that the anti-terrorism program activity is meant to capture USAO activity intended to prevent or disrupt potential or actual terrorist threats where the offense conduct is not obviously a federal crime of terrorism. The manual provides that to the extent evidence or information exists, in any form, reasonably relating the case to terrorism or the prevention of terrorism, the matter should be considered anti-terrorism. The manual provides two examples that demonstrate that the subject, target, or defendant should be reasonably linked to a terrorist activity to be reported under the anti-terrorism program activity: (a) a case involving offenses such as immigration violations, document fraud, or drug trafficking where the subject or target is reasonably linked to terrorist activity; (b) a case of identity theft and document fraud where the defendant's motivation is to obtain access to and damage sensitive government facilities.

<sup>9</sup> The JTTFs are squads within the FBI's field offices that focus primarily on addressing terrorism threats and preventing terrorist incidents.

Department's current top priority being to prevent, disrupt, and defeat terrorist operations, much of the Department's current law enforcement effort originates in terrorism concerns. We also believe that EOUSA could fairly and accurately report to the Department, the Congress, and the public the successes of these operations without inaccurately implying that all of the resulting cases are terrorism related. We are concerned that EOUSA's view of the anti-terrorism category permits criminal cases arising from virtually any federal law enforcement effort, including immigration violations or border enforcement activities, to be categorized as anti-terrorism regardless of the actual circumstances. In our review of the statistics reported by EOUSA, we looked for and accepted any stated terrorism linkage. However, we found many cases involving offenses such as immigration violations, standard document fraud, or drug trafficking, where the subject or target showed no link at all to terrorist activity. Therefore, in accordance with EOUSA's anti-terrorism definition, we did not accept those cases as having support for coding in the anti-terrorism category.

In general, we found that EOUSA and the USAOs had not established effective internal control procedures for verifying the accuracy of the Legal Information Office Network System (LIONS) data to ensure statistics reported based on LIONS data were accurate.<sup>10</sup> More specific reasons for the inaccurate statistics included:

- The statistics on terrorism convictions were inaccurately reported because the USAOs categorized the cases against the defendants under the anti-terrorism program activity when the case was filed but did not change the categorization based upon further investigation or based on the actual evidence found or offenses for which the defendants were convicted.
- The number of defendants in cases filed under the anti-terrorism program activity was inaccurate because the number included defendants that the USAOs could not provide support for a terrorism link. In addition, the number reported included cases filed in a year other than the year reported or for which the USAOs could not provide documentation to show when the case was filed. These same problems contributed to the inaccurate statistics on terrorism convictions, terrorism-related convictions, defendants sentenced to prison, terrorism and anti-terrorism cases against defendants that were terminated, terrorism and anti-terrorism pending, defendants for which terrorism and anti-terrorism cases

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<sup>10</sup> The LIONS system is a database with on-line capabilities that permits the USAOs and EOUSA to compile, maintain, and track information relating to defendants, crimes, criminal charges, court events, and witnesses.

were terminated, and percentage of defendants whose cases were terminated that were convicted.

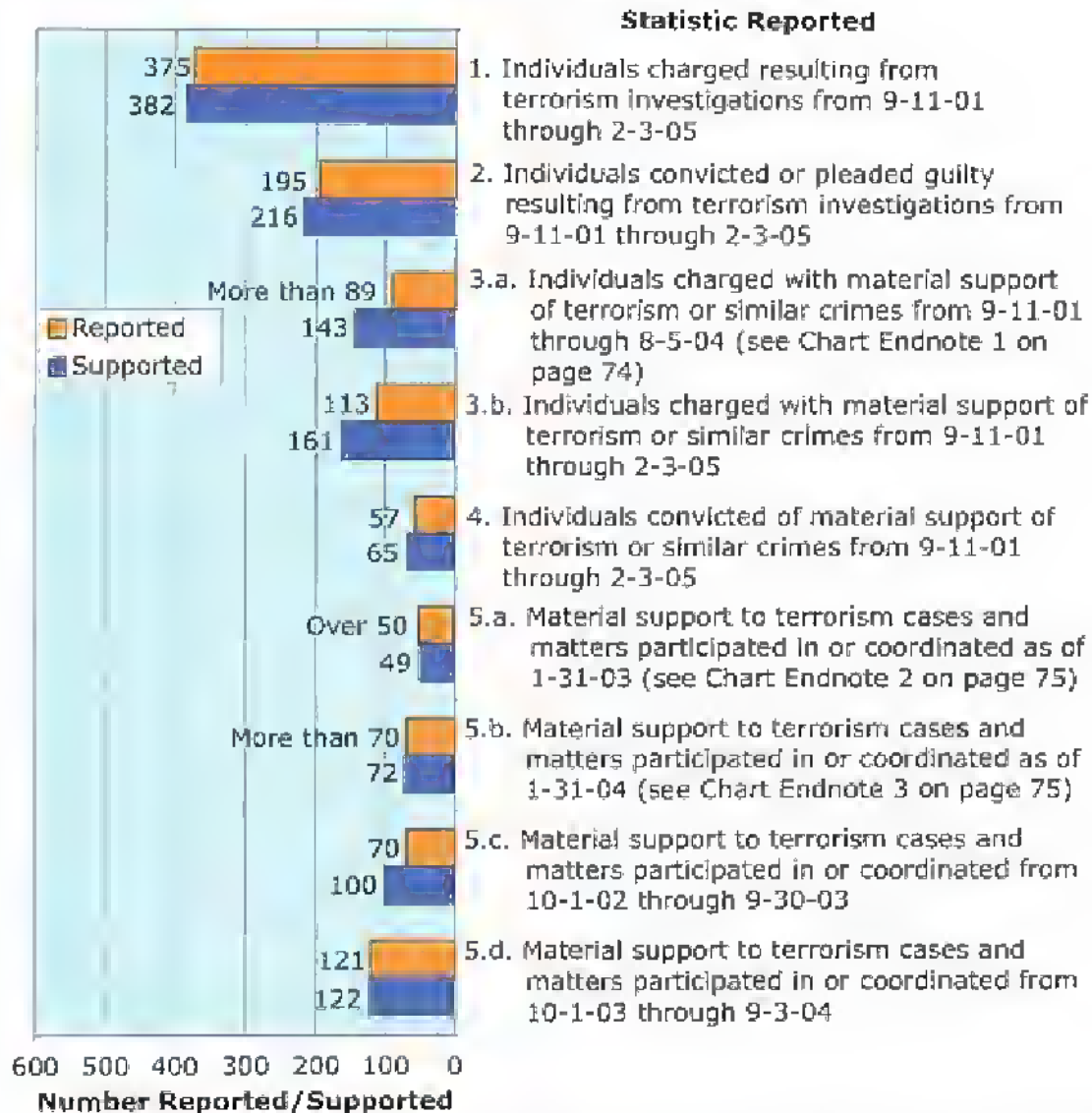
- The statistics reported for defendants prosecuted, defendants found guilty in FY 2002, and terrorism cases tried in 2001, were inaccurate because EOUSA provided a listing from its LIONS system that did not reconcile to the numbers reported and EOUSA could not explain the differences. EOUSA's explanation for these differences is discussed on page 43.

In August 2006, we briefed EOUSA officials regarding the findings of this audit. The Legislative Counsel for EOUSA argued that the defendants in cases coded under the anti-terrorism code were not required to have a link to terrorism. The official stated that the cases focused on the prevention of terrorism activities in line with the Department's number one goal of terrorism prevention.

### **Criminal Division Terrorism Statistics**

As shown in the following chart, the Criminal Division under-reported most of its statistics, based on the support it eventually provided to us.

## OIG Analysis of Terrorism-Related Statistics Reported by the Criminal Division



Source: Criminal Division budgets, OIG Interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff

We determined that the statistics reported by the Criminal Division were inaccurate primarily because the database used to track the statistics was incomplete and not kept up-to-date. This database was incomplete because the Criminal Division had not established formalized procedures to: (1) instruct staff on what data should be reported in the database, and how and when the data should be reported; or (2) validate the accuracy of the information reported in the database.



Moreover, the Criminal Division provided varying sets of data to us regarding its statistics. Because the Criminal Division had not established effective procedures to gather and report accurate terrorism data, the Criminal Division had difficulty providing us a stable or reliable list of cases reported for each of the five statistics we reviewed. When we initially requested information to support the statistics we tested, a Criminal Division official told us that she could not readily provide lists to match the numbers reported because: (1) the database used to support the first four statistics tested was not up-to-date, and (2) the list the Criminal Division had for the last statistic tested did not include all the relevant cases.

As a result, in response to our initial findings about the inaccuracy of its statistics, the Criminal Division requested more time to update the database and reconstruct a list of terrorist financing cases, investigations, or matters that the Criminal Division participated in or coordinated that would support statistics reported. In March 2006, the Criminal Division's Counterterrorism Section (CTS) provided the updated database and lists. We reviewed evidence in support of the March 2006 reconstructed data and found that the Criminal Division's reconstructed data did not support the accuracy of the five statistics we tested for eight of the nine times the statistics were reported. Specifically, our analysis of the reconstructed data and supporting documentation showed that the statistics were overstated six times, understated two times, and reported accurately one time.

In August 2006, we briefed the Criminal Division on the results of our testing of the March 2006 reconstructed data. The Deputy Assistant Attorney General for the Criminal Division stated that while the Criminal Division needed to strengthen its controls to gather, report, and document accurate terrorism statistics, he believed the Criminal Division could provide the documentation needed to support all the statistics reported. In August 2006, the Criminal Division provided us another set of reconstructed lists to support the five statistics we tested.

After extensive analysis and discussions with the Criminal Division, we determined the August 2006 reconstructed data was also inaccurate for seven of the nine times the statistics were reported. The August 2006 reconstructed lists were inaccurate because either: (1) data from the March 2006 reconstructed lists was not included on the August 2006 reconstructed lists but should have been; or (2) relevant data was missing from both the August 2006 and March 2006 reconstructed lists. We reviewed these concerns with Criminal Division officials who agreed that the August 2006 reconstructed lists were incorrect based on the inaccuracies we identified.

Thus, during our audit, the Criminal Division made two attempts to reconstruct support for the terrorism-related statistics we reviewed. We carefully evaluated each attempted reconstruction and found each to be significantly flawed. At the end of this process, we determined that the Criminal Division understated the five statistics we tested eight of the nine times the statistics were reported. The extensive efforts required by the Criminal Division to reconstruct reported statistics demonstrates that the Division had no accurate basis for its reported numbers and could easily and unintentionally misreport in the opposite direction, absent the implementation of effective procedures for gathering and reporting statistics.

## **Conclusion and Recommendations**

In general, we found that the Department components and the Department as a whole did not accurately report terrorism-related statistics. The Department components lacked adequate internal controls for gathering, verifying, and reporting terrorism-related statistics.

To assist the Department and its components in improving the internal controls to ensure the accuracy of its reported terrorism-related statistics, we recommend that the FBI, Criminal Division, and EOUSA:

- (1) establish and document the internal control procedures for gathering, verifying, and reporting terrorism-related statistics;
- (2) maintain documentation to identify the source of all terrorism-related statistics reported;
- (3) maintain documentation of the procedures and systems used to gather or track the statistics reported;
- (4) maintain documentation of the methodologies and procedures used to verify the accuracy of the statistics reported; and
- (5) ensure that terrorism-related statistics are not reported unless evidence is maintained to support the statistics.

In addition, we recommend that EOUSA and the USAOs establish procedures to recode transactions in the LIONS system when investigations that began as terrorism investigations do not ultimately link the defendant to terrorist activity.

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## **INTRODUCTION**

### **The Department's Focus on Terrorism**

After the terrorist attacks of September 11, 2001, the Department of Justice (Department) made the prevention of terrorism and promotion of America's security its primary strategic goal. The Department established the following three objectives to accomplish this goal.

- Prevent, disrupt, and defeat terrorist operations before they occur.
- Investigate and prosecute those who have committed, or intend to commit, terrorist acts in the United States.
- Combat espionage against the United States by strengthening counterintelligence capabilities.

An ongoing challenge for the Department is to effectively manage its resources to implement these objectives. To meet this management challenge, the Department must establish controls to ensure that reliable and timely information is obtained, maintained, reported, and used for decision-making.

The Department and its component agencies gather, classify, and report a wide range of terrorism-related statistics. Some examples of terrorism statistics reported by the Department and its components are:

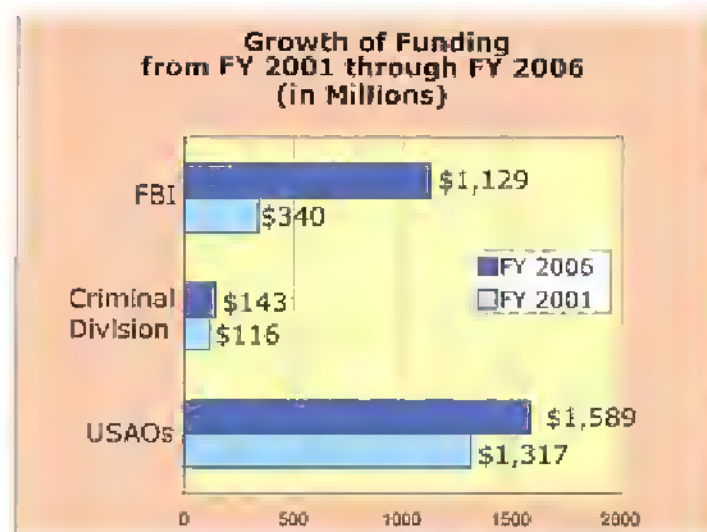
- number of individuals charged as a result of terrorism investigations,
- number of terrorism cases tried,
- number of individuals charged with material support of terrorism or similar crimes,
- number of terrorism convictions,
- number of threats to transportation and facilities,
- number of threats to people and cities, and

- number of Presidential Terrorist Threat Reports produced.<sup>11</sup>

The Department and its components regularly report such statistics in budgets, annual financial statements and statistical reports, the Office of Management and Budget's (OMB) Performance Assessment Rating Tool, performance plans, congressional testimony, speeches, press releases, publications, and websites.<sup>12</sup>

### Counterterrorism Funding and Staffing

Department resources devoted to preventing terrorism and promoting the nation's security have increased from approximately \$737 million in Fiscal Year (FY) 2001 to approximately \$3.6 billion in FY 2006, an increase of almost 400 percent. The counterterrorism resource increases have been shared among the Department's components that combat terrorism, with the FBI receiving the largest share of the increase, as shown in the following chart.



Source: Budget data from the FBI, Criminal Division, and EOUSA. FBI dollars are for the counterterrorism program only. Criminal Division and USAO dollars are for the entire organizations.

<sup>11</sup> Presidential Terrorist Threat Reports, now known as National Terrorism Bulletins, are produced by the National Counterterrorism Center from intelligence products disseminated by agencies in the United States intelligence community, including the Central Intelligence Agency, the FBI, and the Department of Defense intelligence components.

<sup>12</sup> The OMB's Performance Assessment Rating Tool is used to identify the strengths and weaknesses of federal programs and to develop funding and management decisions aimed at making the programs more effective.

## Audit Purpose and Scope

In this audit, we examined the FBI's, the Criminal Division's, EOUSA's, and the USAOs' terrorism-related statistics to determine if they were accurately gathered and reported. We identified the terrorism-related statistics reported by the Department and its components by:

- interviewing officials from the Department, the FBI, the Criminal Division, and EOUSA;
- analyzing budget submissions, congressional testimony, performance plans, and other documents maintained by the Department and its components; and
- viewing the website maintained by the Department at [www.lifeandliberty.gov](http://www.lifeandliberty.gov) to keep the public informed of the Department's counterterrorism efforts.

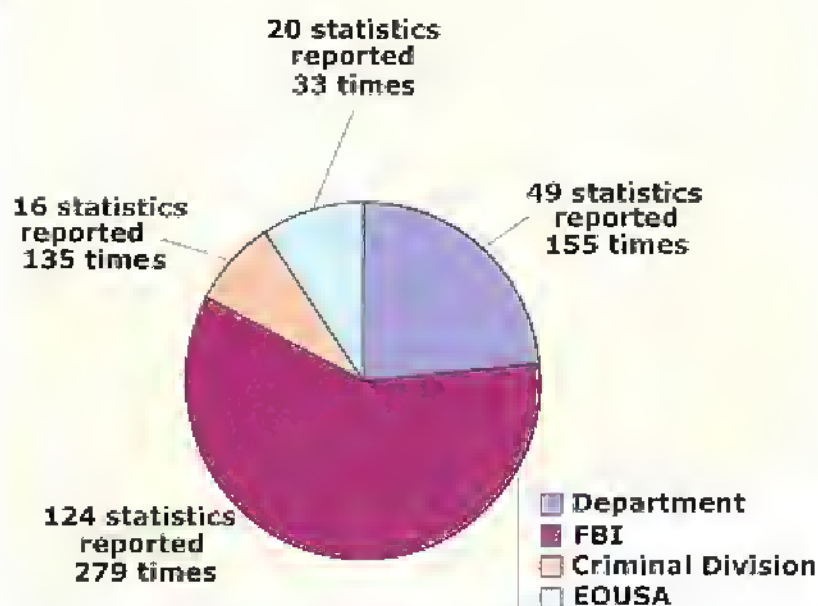
In total, we identified 209 unique terrorism-related statistics reported by the Department and its components from October 1, 2000, through September 30, 2005. To assess whether these statistics were accurate, we examined the internal controls for 192 of the 209 terrorism-related statistics.<sup>13</sup> The 209 statistics were reported at least 602 times during the period as shown in the following chart.<sup>14</sup>

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<sup>13</sup> Seventeen of the 209 statistics were obtained from agencies outside the Department, such as the Departments of State, Treasury, Defense, and Homeland Security. Because these 17 statistics were not gathered by the Department, we excluded them from our review.

<sup>14</sup> While some terrorism-related statistics were reported only once, most were reported multiple times. Many of the statistics identified were reported by more than one agency. The total times the statistic was reported is the number of times (both operational and informational) the statistic was reported by the primary reporting agency and by other agencies.

**Terrorism-Related Statistics Reported by the  
Department and its Components from  
October 1, 2000, through September 30, 2005**



Source: Interviews with Department officials and Department documents

From the 209 terrorism-related statistics, we excluded 150 statistics from detailed review because:

- the statistics were generated by agencies outside the Department (17),
- the source of the statistics could not be identified by Department officials (16),<sup>15</sup>
- the OIG previously reviewed the statistics or supporting systems and made recommendations to correct deficiencies identified (48), and

<sup>15</sup> They include the number of: (1) disrupted donors related to terrorist financing, (2) weapons of mass destruction cases initiated by the FBI and supported by the Hazardous Material Response Unit, and (3) subpoenas and search warrants issued to gather and cultivate detailed intelligence on terrorists in the United States. The statistics for which sources could not be determined are listed in Appendix II.



- the statistics were used exclusively for informational as opposed to operational purposes (69).<sup>16</sup>

Of the remaining 59 terrorism-related statistics, we judgmentally selected 26 statistics for detailed testing based on our assessment of the risk associated with reporting the statistic inaccurately and of the significance of the statistic to the Department's counterterrorism efforts. The statistics selected included 10 from the FBI, 5 from the Criminal Division, and 11 from the USAOs. We then analyzed documentation provided by the components and conducted interviews of component officials to confirm the accuracy of the statistics sampled. We did not test any of the statistics reported by the Department as a whole because the Department reported those statistics for informational purposes, and we decided to focus our efforts on the statistics used for operational purposes.

More details about our methodology for evaluating the accuracy of the terrorism-related statistics reported by the Department and its components are contained in the Objectives, Scope, and Methodology in Appendix I. The results of our audit work and testing are reported in the Finding and Recommendations section of the report.

## **Prior Audits**

Several previous audits and inspections by the OIG and Government Accountability Office (GAO) have reviewed or touched upon the accuracy of terrorism-related statistics reported by the Department.

As previously stated, the OIG reviewed 48 terrorism-related statistics or supporting systems and made recommendations to correct deficiencies identified. The results of these reviews were included in nine

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<sup>16</sup> Informational purposes included statistics such as those used in speeches, press releases, publications, and websites. Operational purposes included statistics such as those used in Department and component budget requests, performance plans, and annual financial statements and statistical reports.

audit and inspection reports issued from September 2003 through September 2005.<sup>17</sup>

In a January 2003 report, the GAO reported on the Department's need for better controls and oversight of terrorism-related statistics.<sup>18</sup> The GAO reported that in FY 2001 the Department switched from using the FBI's terrorism-related conviction statistics to using those of EOUSA for its annual report because of: (1) concerns raised by a newspaper article's allegation that the Department had inflated its terrorism numbers in its FY 2000

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<sup>17</sup> The nine reports are:

Department of Justice, Office of the Inspector General. *Follow-up Audit of the Department of Justice Counterterrorism Fund*, Audit Report Number 03-33, September 2003

Department of Justice, Office of the Inspector General. *Federal Bureau of Investigation Casework and Human Resource Allocation*, Audit Report Number 03-37, September 2003

Department of Justice, Office of the Inspector General. *The Federal Bureau of Investigation's Foreign Language Program – Translation of Counterterrorism and Counterintelligence Foreign Language Material*, Audit Report Number 04-25, July 2004

Department of Justice, Office of the Inspector General: Audit Report Number 04-39, *Internal Effects of the Federal Bureau of Investigation's Reprioritization*, September 2004

Department of Justice, Office of the Inspector General. *The Federal Bureau of Investigation's Efforts to Hire, Train, and Retain Intelligence Analyst*, Audit Report Number 05-20, May 2005

Department of Justice, Office of the Inspector General. *Review of the Terrorist Screening Center*, Audit Report Number 05-27, June 2005

Department of Justice, Office of the Inspector General, Evaluation and Inspection Division. *The Department of Justice's Terrorism Task Forces*, Report Number I-2005-007, June 2005

Department of Justice, Office of the Inspector General. *The Federal Bureau of Investigation's Foreign Language Translation Program Follow-Up*, Audit Report Number 05-33, July 2005

Department of Justice, Office of the Inspector General. *External Effects of the Federal Bureau of Investigation's Reprioritization Efforts*, Audit Report Number 05-37, September 2005

<sup>18</sup> General Accounting Office. *Justice Department, Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Statistics*, GAO-03-266, January 2003. On July 7, 2004, the GAO was renamed the Government Accountability Office.

Performance Report,<sup>19</sup> and (2) an effort to report conviction statistics that would be less likely to be misinterpreted. Prior to FY 2002, the FBI and EOUSA used different criteria to classify cases and resulting convictions as terrorism-related, resulting in differences in how each entity ultimately classified a case. Consequently, the total number of convictions classified by the FBI and EOUSA as terrorism-related differed. Also, because EOUSA prosecutes federal cases, its classification system only includes federal convictions, while the FBI's classification system also includes convictions in state, local, and international courts obtained with the FBI's investigative assistance. The GAO reported that the Department did not have sufficient management oversight and internal controls in place to ensure the accuracy and reliability of terrorism-related conviction statistics included in its annual performance reports.

In a March 2004 report, the GAO reported on: (1) the guidance and procedures followed by federal law enforcement agencies regarding counting investigations and arrests, and (2) how investigations and arrests statistics are used.<sup>20</sup> The report also discussed whether multiple agencies were counting and reporting the same investigations and arrests. The GAO concluded that law enforcement agencies often count the same investigations and arrests resulting from joint operations and present these statistics in their public documents and budget justifications. The GAO also observed that: (1) none of the law enforcement agencies reviewed have a central repository of joint investigations and arrests, and (2) not all of the agencies distinguish between unilateral and joint arrests and investigations within their databases. The GAO concluded that making this distinction would help Congress when making budget decisions related to these agencies.

### **Department's Response to Concerns about Inaccurate Terrorism-Related Statistics**

From December 2004 through April 2005, senior Department officials provided written responses to post-hearing questions from the Senate

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<sup>19</sup> Mark Fazlollah and Peter Nicholas, "U.S. Overstates Arrests in Terrorism," *The Philadelphia Inquirer*, December 16, 2001.

<sup>20</sup> General Accounting Office, *Federal Law Enforcement, Information on the Use of Investigation and Arrest Statistics*, GAO-04-411, March 2004. The GAO reviewed six federal agencies: the Drug Enforcement Administration; the FBI; the United States Marshals Service; the former U.S. Customs Service and the Immigration and Naturalization Service, now part of the Department of Homeland Security; and the United States Postal Inspection Service.

Judiciary Committee regarding the accuracy of terrorism-related statistics.<sup>21</sup> Subsequent to each of these hearings, the Assistant Attorney General for the Office of Legislative Affairs provided the Department's response to additional questions resulting from the hearings. In response to post-hearing questions from the October 21, 2003, hearing, the Assistant Attorney General said:

I note that the fact that a defendant was not charged with and convicted of a terrorism offense, or publicly linked to terrorism by the FBI, does not mean that law enforcement had no concerns or evidence regarding that individual's connection with terrorism. Likewise, the fact that an alien was deported rather than prosecuted does not mean that he had no knowledge of, or connection to, terrorism. In certain cases, evidence of a defendant's knowledge of, or connection to, terrorist activity may not be sufficient to prove a terrorism crime beyond a reasonable doubt, or proving a criminal offense may require the disclosure of sensitive sources or classified information. In situations like these, the best alternative from a national security and law enforcement perspective is to charge the defendant under other applicable criminal statutes, or – if the defendant is an alien eligible for removal – to remove him from the United States and do our best to ensure that he does not return. While these alternatives do not yield sentences as lengthy as those imposed upon defendants convicted of terrorism offenses, they help the Department achieve its top priority: the detection, prevention, and disruption of terrorist activity.

In response to post-hearing questions from the May 5, 2004, and September 22, 2004, hearings, the Assistant Attorney General provided a similar response.

We agree that defendants charged or convicted of non-terrorism offenses may have a link to terrorism. However, defendants should not be reported in terrorism-related statistics unless some support is available for

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<sup>21</sup> The post-hearing questions arose in connection with the: (1) October 21, 2003, hearing before the Senate Judiciary Committee on "Protecting Our National Security From Terrorist Attacks: A Review of Criminal Terrorism Investigations and Prosecutions;" (2) May 5, 2004, hearing before the Senate Judiciary Committee on "Aiding Terrorists: An Examination of the Material Support Statutes;" and (3) September 22, 2004, hearing before the Senate Judiciary Committee on "A Review of Counter-Terrorism Legislation and Proposals, Including the USA PATRIOT Act and the SAFE Act."

the terrorism link. The initial allegation alone does not necessarily provide such a link.

## **FINDING AND RECOMMENDATIONS**

### **DEPARTMENT COMPONENTS LACK EFFECTIVE CONTROLS FOR REPORTING ACCURATE TERRORISM STATISTICS**

Department components did not accurately report terrorism-related statistics in their annual budgets, financial statements, performance plans, and statistical reports. For most statistics we tested, the component either could not provide support for the numbers reported or could not identify the terrorism link used to classify statistics as terrorism-related. Some of the statistics were significantly overstated and some understated. We concluded that the components lacked effective internal controls to ensure accurate reporting of terrorism-related statistics.

#### **Our Audit Approach**

We developed a universe of 209 terrorism-related statistics that were reported by the Department and its components from October 1, 2000, through September 30, 2005. The 209 statistics were reported at least 602 times. Seventeen of the 209 statistics were obtained from agencies outside the Department, such as the Departments of Treasury, State, Defense, and Homeland Security. Because these 17 statistics were not gathered by the Department, we excluded them from our review. The 17 statistics originating outside the Department accounted for 98 of the 602 times that the 209 statistics were reported.

The remaining 192 terrorism-related statistics were reported by and sourced to the FBI, the Criminal Division, the USAOs, and the Department as a whole. We divided the 192 statistics into two groups. The first group consisted of statistics used primarily for operational purposes that were reported in annual budgets, annual financial statements, statistical reports, and performance plans. The second group consisted of statistics used primarily for informational purposes reported in speeches, press releases, and unclassified publications. We classified 123 of the 192 statistics as operational and the remaining 69 as informational.

For our initial testing, we interviewed Department officials from the FBI, EOUSA, the Criminal Division, and other Department agencies to determine whether internal controls were in place and documented to ensure

the 192 statistics were accurately gathered, classified, and reported.<sup>22</sup> Through the interviews, we learned that the Department's collection and reporting of terrorism-related statistics is haphazard. Often, the official who reported the statistic gathered the statistic through telephone requests or e-mail to other Department staff. Also, for many statistics reported, Department officials either had not established internal controls to accurately gather, classify, and report the statistics, or did not document the internal controls used.

For the 192 statistics reviewed, 2 were based on survey instruments sent by EOUSA to the 93 United States Attorneys. For these two statistics, we did not assess the extent that internal controls were established over this survey process. Two other statistics simply reported that an annual threat forecast was disseminated or that an anti-terrorism task force was established in each of the 94 USAOs. Therefore we did not assess the extent that internal controls were established over these processes. In addition, we could not determine if internal controls were established and documented for 55 other statistics because the reporting agency officials either could not explain where the statistics originated or could not readily determine the controls established and documented. For the remaining 133 statistics, the status of internal controls is shown in the following table. As noted in the table, controls for some statistics were both established and documented as required. Controls for other statistics were either established but not documented or not established at all.

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<sup>22</sup> Internal control is a major part of managing an organization. It comprises the plans, methods, and procedures used to meet missions, goals, and objectives and, in doing so, supports performance based management. Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.

**Summary of Analyses of Internal Controls for Terrorism-Related Statistics  
Reported by the Department and its Components**

<b>Primary Reporting Agency</b>	<b>Type Statistic</b>	<b>Internal controls established and documented</b>	<b>Internal controls established but not documented<sup>23</sup></b>	<b>Internal controls not established</b>	<b>Totals</b>
<b>Department</b>	Operational	1	3	0	4
	Informational	6	1	7	14
<b>FBI</b>	Operational	47	11	10	68
	Informational	6	4	3	13
<b>Criminal Division</b>	Operational	3	1	10	14
	Informational	0	0	0	0
<b>EOUSA</b>	Operational	16	4	0	20
	Informational	0	0	0	0
<b>Totals</b>	Operational	67	19	20	106
	Informational	12	5	10	27

Source: For each of the 133 statistics summarized in this table, we interviewed officials and asked if internal controls had been established regarding the gathering, classification, and reporting for each statistic. When we were told that internal controls had been established, we requested copies of the documentation.

After the initial testing, we focused our detailed testing on the 123 operational statistics that we considered to be most central to the Department's counterterrorism objectives. For each of the 123 operational statistics, we interviewed Department officials to identify the source of the statistics, the information systems used to gather and report the statistics, and the internal controls established to verify the accuracy of the statistics gathered and reported. We excluded 16 operational statistics for which Department officials could not identify the source.<sup>24</sup> Because Department officials could not identify the source of these 16 statistics, we could not determine if the statistics were accurately reported or whether adequate internal controls were established to ensure their accuracy.

Twelve of the 16 statistics were reported in various FBI budget requests or performance plans and the remaining 4 were reported in budget related testimony by the Attorney General. These included the number of: (1) disrupted donors related to terrorist financing, (2) weapons of mass destruction cases initiated by the FBI and supported by the Hazardous Material Response Unit, and (3) subpoenas and search warrants issued to gather and cultivate detailed intelligence on terrorists in the United States.

<sup>23</sup> For five of the FBI statistics (four operational and one informational), we determined that internal controls had been established but the reporting officials could not readily determine whether the controls were documented. We included these five statistics in the column for internal controls established but not documented.

<sup>24</sup> Appendix II contains a description of the 16 statistics and where each statistic was reported.



We believe the Department should not report terrorism-related statistics unless it maintains evidence to support the statistics.

For the remaining 107 operational statistics, we eliminated 48 from testing in this audit because the statistics or the systems supporting them had been previously reviewed by the OIG and recommendations for improvement made, where appropriate.

From the remaining 59 operational statistics, we selected 26 statistics for detailed testing based on our assessment of the significance of the statistic to the Department's counterterrorism efforts and of the risk associated with reporting the statistic inaccurately. The 26 operational statistics included:

- 10 from the FBI that were reported 13 times (see FBI Terrorism Statistics section of this report),
- 11 from the USAOs that were reported 20 times (see EOUSA Terrorism Statistics section of this report), and
- 5 from the Criminal Division that were reported 9 times (see Criminal Division Terrorism Statistics section of this report).

We found that the FBI, EOUSA, and the Criminal Division either: (1) could not provide documentation to support the numbers reported for the statistics, (2) could not provide documentation of the terrorism link used to classify statistics as terrorism-related, or (3) provided documentation to show that the occurrence of the transactions reported did not always agree with the period reported. Some of the statistics were significantly overstated or understated, while others were overstated or understated by minor amounts.

As summarized in the following table, the FBI, EOUSA, and the Criminal Division did not accurately report 24 of the 26 statistics we reviewed.

**Summary Results: Review of Selected  
Terrorism-Related Statistics Reported by  
the Department and its Components**

<b>Primary Reporting Agency</b>	<b>Number of Statistics Not Accurately Reported</b>	<b>Number of Times Inaccurately Reported</b>
<b>FBI</b>	8 of 10	11 of 13
<b>EOUSA (USAOs)</b>	11 of 11	20 of 20
<b>Criminal Division</b>	5 of 5	7 of 9
<b>Totals</b>	24 of 26	38 of 42

Source: OIG's conclusion based on interviews with Department officials and analyses of Department records

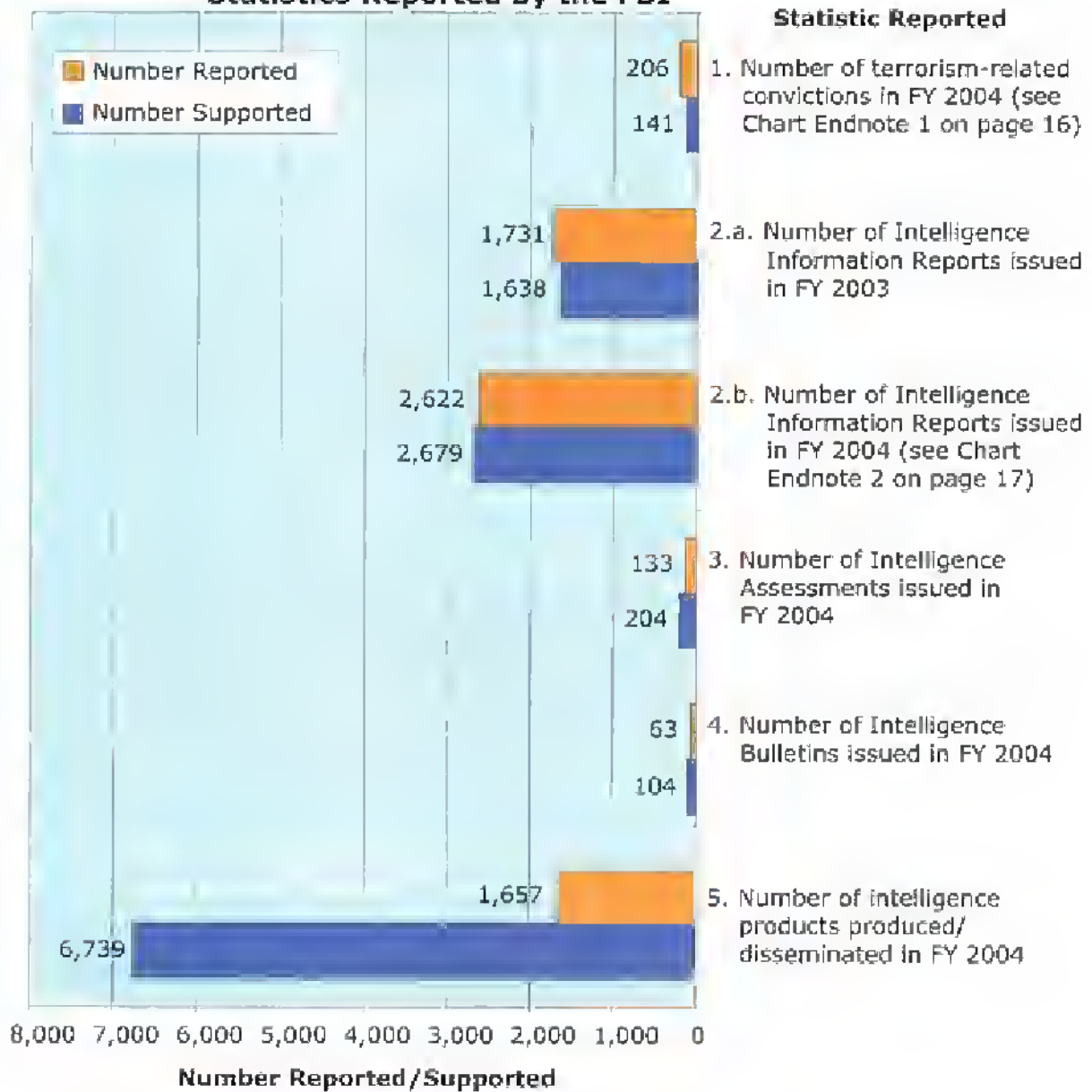
We also concluded that the FBI, EOUSA and the USAOs, and the Criminal Division had not established effective internal controls to ensure the statistics were accurately gathered, classified, and reported. Terrorism-related statistics are considered in budgetary and operational decisions by Department management, the President and Congress. Therefore, it is essential that the Department and its component agencies make every effort to ensure the accuracy of the statistics reported.

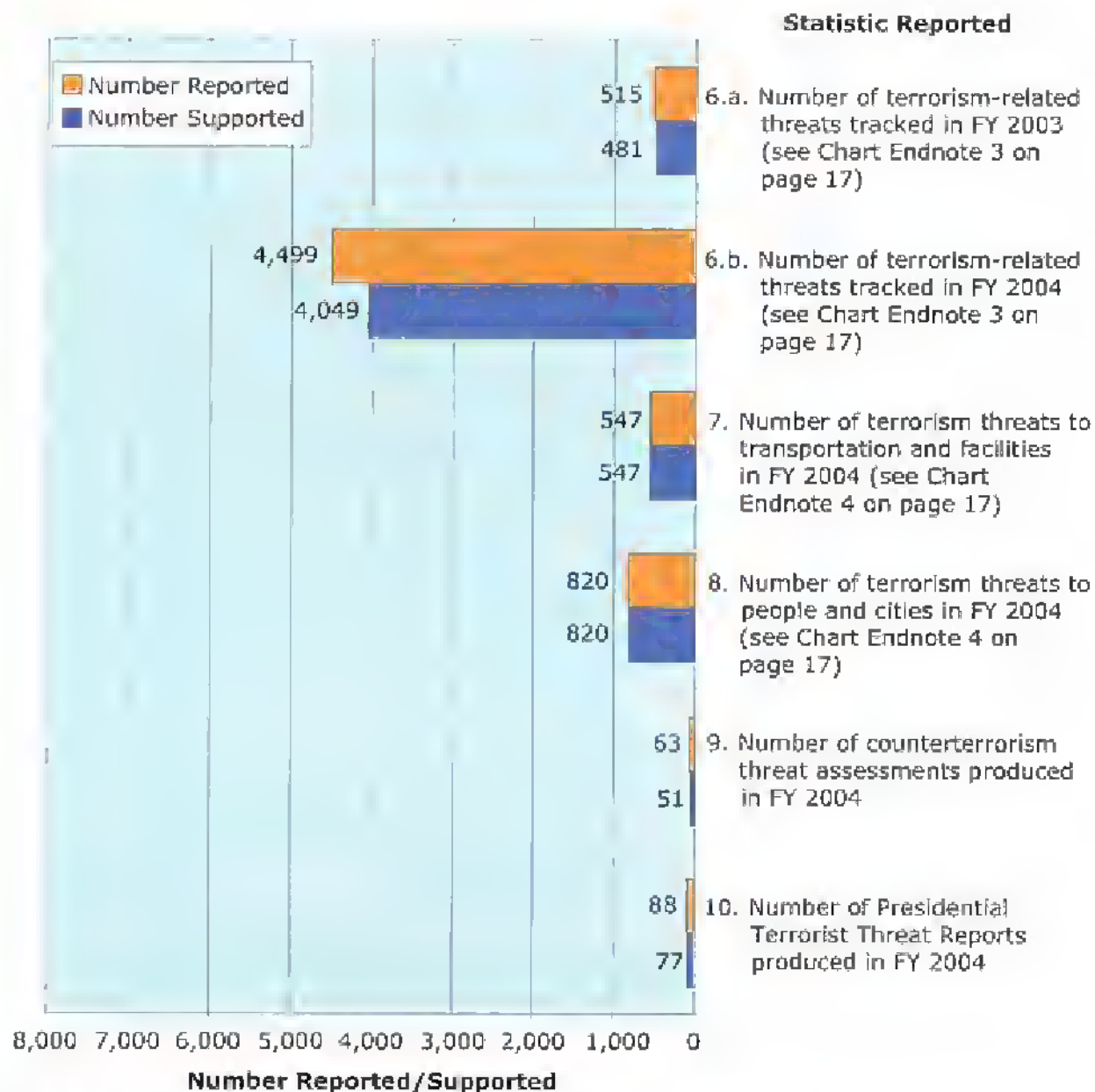
Our detailed testing of the accuracy of the 26 statistics reported is discussed in the following sections.

### **FBI TERRORISM STATISTICS**

We tested 10 FBI operational statistics reported 13 times from October 1, 2000, through September 30, 2005. For each of the 10 statistics tested, we reviewed evidence in support of each statistic, as well as the internal controls in place to ensure the statistics were accurately reported. As shown in the following charts, we found that the FBI did not accurately report 8 of the 10 statistics we tested.

**(OIG Analysis of Terrorism-Related  
Statistics Reported by the FBI)**





Source: FBI budget requests and performance plans, OIG interviews with FBI staff, and analysis of documents provided by FBI staff

**Chart Endnotes**

1. The number supported for this statistic is based on a sample of transactions reported. Therefore, the number supported could be less than shown in the table and the difference could be more based on a 100-percent review of transactions reported.

Chart Endnotes - continued

2. The 2,622 reported for FY 2004 was reported twice – once in the classified portion of the FY 2006 President's Budget Request to Congress and once in the FBI's FY 2006 – FY 2011 Performance Plan. Thus the statistic was inaccurately reported twice.
3. According to an FBI official, the reported threats included only threats tracked by the FBI's Threat Monitoring Unit and accounted for only about 40 percent of the threats actually tracked by the FBI. The FBI official said that the remaining 60 percent of threats were tracked by FBI field offices during FY 2003, and also by the FBI's Counterterrorism Watch Unit, and the FBI's International Terrorism Operations Sections during FY 2004. As a result, the number of threats actually tracked by the FBI during FY 2003 and FY 2004 was significantly understated.
4. The threats reported for FY 2004 were for only 9 months, from January through September 2004. An FBI official told us that threat data for all of FY 2004 was not reported because of the timing of the request from the Counterterrorism Division's Administrative Section. The official said his unit began capturing threats in May or June 2004, and in December 2004 or January 2005 the Administrative Section requested the threat data for FY 2004. The official said that at that time his unit had begun identifying and counting the threats prior to May or June 2004 but had not completed the process. Therefore, he reported the threat data for the 9 months (January through September 2004) that had been completed. Thus, the FBI understated the threats in this category for FY 2004 since data was not reported for 25 percent of the fiscal year.

## **1. Number of Terrorism-Related Convictions**

The FBI's FY 2006 – FY 2011 Performance Plan includes a performance goal to "Prevent, disrupt, and defeat terrorist operations before they occur." In its FY 2006 – FY 2011 Performance Plan, the FBI reported that its investigations resulted in 206 convictions during FY 2004 towards the achievement of this performance goal. To determine the accuracy of the reported convictions, we first obtained a listing from the FBI's Integrated Statistical Reporting and Analysis System showing details of the 206 convictions reported for FY 2004. We then selected a judgmental sample of 107 of the 206 convictions by selecting all the convictions reported by the 7 FBI field offices with the highest number of reported convictions (El Paso, Texas - 32; Dallas, Texas - 22; Salt Lake City, Utah - 17; Atlanta, Georgia - 12; Richmond, Virginia - 10; Philadelphia, Pennsylvania - 8; and Charlotte, North Carolina - 6). Next, we reviewed the case files and held discussions with the case agents regarding whether the individuals in these 107 cases were convicted of or pleaded guilty to terrorism-related crimes, and how the convictions met the FBI's performance goal of "Prevent, disrupt, and defeat terrorist operations before they occur." We found that:

- The case agents could explain and provide documentation to link only 42 of the 107 convictions to the achievement of the FBI's performance goal. Only 4 of these 42 individuals were actually convicted of or pleaded guilty to a crime under a terrorism statute.
- Seven of the remaining 65 convictions were erroneously entered into the Automated Case Tracking System (ACS) twice.

Some examples of convictions that the FBI reported as helping achieve its performance goal of preventing, disrupting, or defeating terrorist operations before they occur, but for which the FBI could not provide documentation to support a link to terrorism are as follows:

- The subject, an Iranian national, made false statements while being interviewed by an FBI agent. The FBI agent's summary of the case indicated that no evidence of terrorism was discovered. However, the subject was shown to be a pathological liar who was not able to provide truthful information about anything. The FBI agent said that none of the collateral interviews conducted uncovered any terrorist activity. The subject was convicted of knowingly and willfully making a materially false, fictitious, or fraudulent statement or representation.
- The subject was employed by a state Department of Motor Vehicles and was responsible for receiving and approving applications from individuals for the issuance of driver's licenses. In exchange for money, the subject conspired with others to arrange for driver's licenses to be issued illegally to individuals who were not legally qualified to obtain the driver's licenses. The case evidence provided by the FBI contained no indication that the subject was linked to terrorist activity. When we asked an FBI official to provide additional evidence to support a terrorism link, the official provided no additional evidence. The subject was convicted of: (1) conspiring to commit an offense against the United States or to defraud the United States or any agency thereof, and (2) producing a fraudulent identification document.
- The subject telephoned the local police department and reported that 30 vials of Yersinia Pestis bacteria, the infectious agent of bubonic plague, could not be located. During FBI questioning, the subject admitted that he had accidentally destroyed the vials and made up the story in an effort to account for the vials. The case evidence provided to us by the FBI contained no indication that the

subject was linked to terrorist activity. When we asked an FBI official to provide additional evidence to support a terrorism link, the official provided no additional evidence and told us that, had the bacteria actually been missing and not destroyed, the potential would have existed for terrorists to get and use the missing bacteria to perform a terrorist act. The subject was convicted of making a materially false, fictitious, or fraudulent statement and misrepresenting that hazardous materials were contained in the missing package.

- A Bosnian subject fraudulently obtained a commercial driver's license. The case evidence provided to us by the FBI contained no indication that the subject was linked to terrorist activity. The subject was convicted of knowingly using a false social security number on a commercial driver's license application. When we asked an FBI official to provide additional evidence to support a terrorism link, the official provided no additional evidence and told us that the resulting conviction stopped the fraudulent activity and could have prevented a terrorist from getting a commercial driver's license and using it to commit a terrorist act. The official also stated that by opening the case as a domestic terrorism investigation instead of a white-collar crime investigation the case would get a higher priority.

We concluded that the FBI overstated the 206 terrorism-related convictions reported for FY 2004 by at least 65. We believe the reported convictions were overstated because the FBI initially coded the investigative cases as terrorism-related when the cases were opened, but did not recode the cases when no link to terrorism was established.

An FBI official told us that the fact that the individuals were not charged with terrorism offenses and received light sentences does not mean that: (1) the subjects were not linked to terrorism, or (2) the conviction of the subjects did not prevent future terrorist acts from being committed. However, while we accept the FBI's statement in principle, and did consider a connection to be terrorism-related if there was any evidence of a terrorism link, we found none in many cases. Absent evidence of a terrorism link these convictions should not be considered terrorism-related.

## **2. Intelligence Information Reports**

The FBI's Intelligence Information Reports are the standard vehicle through which all raw intelligence information is shared with national policy makers and the intelligence and law enforcement communities. The reports

disseminate potentially actionable intelligence to staff of the FBI, intelligence community agencies, the White House, the State Department, the military, and other selected federal agencies. The reports detail specific results of classified intelligence collected on internationally based terrorist suspects and activities. By design, the reports are not analyses or necessarily validated intelligence, and are not broad assessments or estimates. The FBI's Terrorism Reports and Requirements Section (TRRS) maintains a database called Zeus that contains details of the Intelligence Information Reports issued.<sup>25</sup>

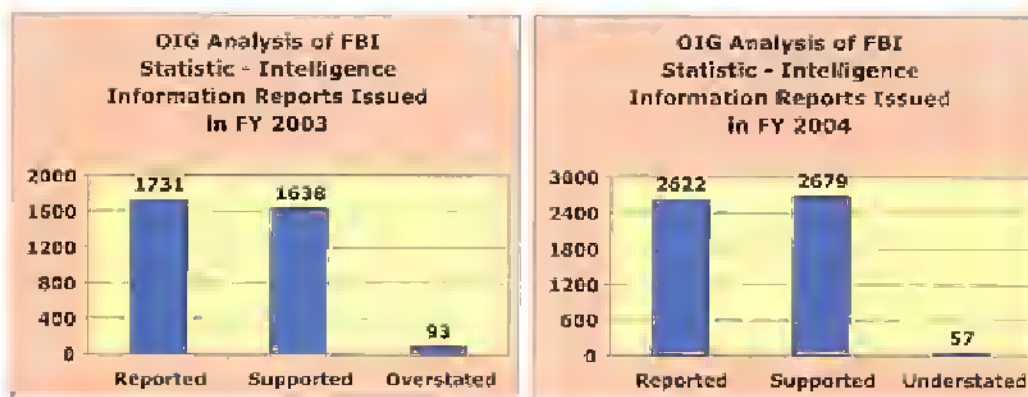
In the FY 2006 President's Budget Request to Congress, the FBI reported issuing 1,731 Intelligence Information Reports during FY 2003. In the same budget request and in its FY 2006 - FY 2011 Performance Plan, the FBI reported issuing 2,622 Intelligence Information Reports during FY 2004.<sup>26</sup> Because budget requests and performance plans are prepared many months before the start of the fiscal year, the FBI usually reports actual data for the fiscal year that is two years prior to the fiscal year for which the budget requests and performance plans are prepared. As shown in the following charts, we found that the Zeus database used by the TRRS to track the number of Intelligence Information Reports did not support the statistics reported for either FY 2003 or FY 2004.

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<sup>25</sup> The TRRS was established after the September 11 attacks to facilitate information-sharing in an organized, systematic fashion. The TRRS mission is to support U.S. government efforts to detect, disrupt, and prevent acts of terrorism by managing the collection, evaluation, and dissemination of raw intelligence information on terrorism.

<sup>26</sup> Each year a President's Budget Request to Congress is submitted that identifies the funding needed to carry out the missions of the federal government for the year covered by the budget. Performance plans are submitted each year with an agency's budget request and includes performance goals and indicators for the fiscal year, a description of the resources needed to meet the goals, and a description of how results will be verified and validated. The 2,622 Intelligence Information Reports for FY 2004 was reported twice – once in the FY 2006 President's Budget Request to Congress and once in the FY 2006 – FY 2011 Performance Plan.





Source: FBI budget requests and performance plans, OIG interviews with FBI staff, and analysis of documents provided by FBI staff

According to the TRRS officials, draft intelligence reports are submitted through the FBI's Intelligence Information Reports Dissemination System (FIDS). Once the reports are submitted through FIDS, the report data is recorded in the Automated Case Tracking System (ACS). The Intelligence Information Reports are prepared from the draft intelligence reports, approved by management, and issued to agencies outside the FBI. The intelligence report data is then uploaded from the ACS and logged into the Zeus database. According to TRRS officials, the Intelligence Information Reports are uploaded and verified monthly against information contained in the Zeus database. However, this quality control process for uploading and verifying the information is not documented and does not appear to prevent the inaccurate reporting of Intelligence Information Reports issued.

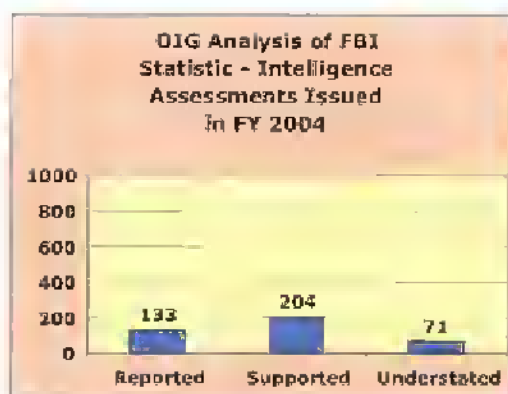
A TRRS official told us that the differences between the numbers reported in the budget and performance plan and the Zeus database could have resulted from how the database was queried based on how the initial request for the Intelligence Information Reports was worded. However, the official could not provide documentation to show how the initial request was worded or how the database was queried to meet the request. The official also told us that the number of Intelligence Information Reports reissued, corrected, and recalled, or additional information added to the Intelligence Information Reports, could also have affected the accuracy of the number of Intelligence Information Reports tracked in the Zeus database for FY 2003 and FY 2004.

### 3. Intelligence Assessments

The FBI's Intelligence Assessments are finished intelligence products resulting from the intelligence analysis process. Intelligence Assessments contain analyses of various types of intelligence data and are disseminated to the FBI, intelligence community agencies, the White House, the State

Department, the military, and other selected federal agencies. The FBI's Global Terrorism Analysis Unit (GTAU) maintains a local database application that contains details of the Intelligence Assessments issued.<sup>27</sup>

In its FY 2006 - FY 2011 Performance Plan, the FBI reported issuing 133 Intelligence Assessments during FY 2004. As shown in the following chart, we found that the database used by the GTAU to track the Intelligence Assessments issued did not match the number reported for FY 2004.



Source: FBI performance plans, OIG interviews with FBI staff, and analysis of documents provided by FBI staff

A GTAU official told us that the inaccurate reporting of Intelligence Assessments issued likely occurred because: (1) staff did not enter Intelligence Assessments in the database in a timely manner, and (2) the database was queried by calendar year or other specific time periods instead of by fiscal year. However, the official could not provide documentation to show how the database was queried to derive the number of assessments reported.

According to a GTAU official, the FBI units that issue the Intelligence Assessments enter the details of the assessments issued into a database. The GTAU relies on the originating FBI units to enter all the Intelligence Assessments in the database. There are no internal controls in place for gathering and verifying the accuracy of Intelligence Assessments tracked in the database. The GTAU official responsible for accumulating the statistic said that when she began her job in February 2004 there were no formalized procedures on how to collect, verify, and report the Intelligence

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<sup>27</sup> The GTAU is part of the FBI's Counterterrorism Division and performs analyses of information related to international terrorist groups not covered by other analytical units that have bases of operations in Africa, Asia, Europe, Latin America, and North America.

Assessments issued and no formalized procedures have been developed since.

#### **4. Intelligence Bulletins**

The FBI Intelligence Bulletin is a finished intelligence product used to disseminate information of interest, such as significant developments and trends, to the intelligence and law enforcement communities in an article format. Intelligence Bulletins do not address threat warning information.

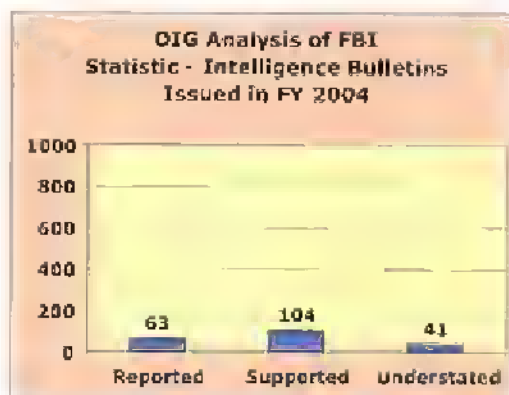
Units within the National Threat Center Section (NTCS)<sup>28</sup> and the Counterterrorism Analysis Section (CTAS)<sup>29</sup> produced and disseminated Intelligence Bulletins on behalf of the FBI during FY 2004 through FY 2006. Within the NTCS, the Terrorist Watch and Warning Unit (TWWU) produced a numbered series of Intelligence Bulletins intended primarily for U.S. law enforcement agencies. The first such Bulletin was disseminated in February 2004, and in August 2004 TWWU began producing the bulletins jointly with the Department of Homeland Security. TWWU tracked the details of its Bulletins in word processing files that captured the title, date of dissemination, and subject matter of each bulletin. Within the CTAS during FY 2004 and continuing through FY 2006, a GTAU staff member used a local database application to track Intelligence Bulletins issued by all of the CTAS units.

In its FY 2006 - FY 2011 Performance Plan, the FBI reported issuing 63 Intelligence Bulletins during FY 2004. As shown in the following chart, we found that the word processing file used by the TWWU and the database used by the GTAU to track Intelligence Bulletins issued did not match the number reported in FY 2004.

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<sup>28</sup> The NTCS is responsible for producing cross-cutting analysis focusing primarily on early warning of NTCS emerging terrorist threats to the United States. The NTCS is also responsible for identifying long-term, threat-related issues that may affect FBI investigative or operational strategy against terrorist targets. The NTCS is the Counterterrorism Division's focal point with the intelligence and law enforcement communities relative to the coordination of domestic threats, including monitoring and facilitation of the passage of threat information to federal, state, and local authorities.

<sup>29</sup> The CTAS is responsible for tracking Intelligence Bulletins issued by the FBI. In FY 2004, the CTAS was comprised of five units. They included: (1) GTAU, (2) Domestic Sunni Extremism Analysis Unit (DSEAU), (3) Shia/Middle East Analysis Unit (SMEAU), (4) Domestic Terrorism Analysis Unit (DTAU), and (5) Weapons of Mass Destruction/Emerging Weapons Threat Analysis Unit (WMD/EWTAU). In August 2005, the analytical component of the Threat Watch and Warning Unit (TWWU) was: (1) transferred from NTCS to CTAS, and (2) merged with the WMD/EWTAU to form the Threat Analysis Unit within CTAS.



Source: FBI performance plans, OIG Interviews with FBI staff, and analysis of documents provided by FBI staff

According to an official of the former TWWU, once Intelligence Bulletins were approved for dissemination during FY 2004 data regarding the Bulletins was entered in the word processing files for tracking. The former TWWU used an internal checklist that guided an analyst through the stages of Bulletin production, review, dissemination, and administrative upkeep. However, the checklist was not accompanied by an explanation of responsibilities and processes for collecting, verifying, and reporting the Intelligence Bulletins issued. During FY 2004, and continuing through July 2005, a TWWU staff member provided monthly to a GTAU Official the number of Bulletins issued.

The problems with tracking Intelligence Bulletins are like those with tracking Intelligence Assessments, according to a GTAU official. The FBI units that issue the bulletins either enter their details into a database or provide the GTAU staff the details and the GTAU staff enters them in the database. The GTAU official relies on the originating FBI units to either enter all the Intelligence Bulletins in the database or notify the GTAU official of the bulletins. There are no internal controls in place for gathering and verifying the accuracy of Intelligence Bulletins tracked in the database. A GTAU official responsible for accumulating the statistic said that when she began her job in February 2004, there were no formalized procedures on how to collect, verify, and report the Intelligence Bulletins issued and no formalized procedures have been developed since.

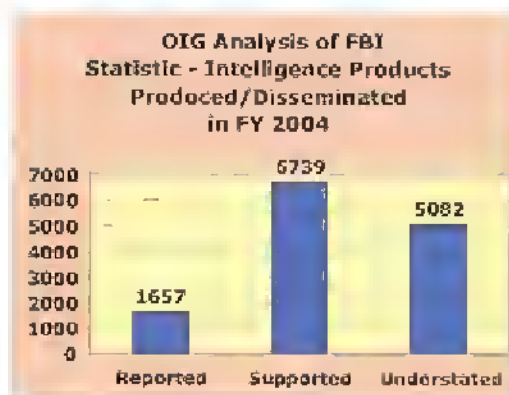
According to a Threat Analysis Unit (TAU) official, in June 2006 the CTAS established a new tracking and monitoring intelligence production and dissemination system where all Intelligence Bulletins, Intelligence Assessments, and other intelligence products are logged into a spreadsheet application. As of November 2006, the procedures on how to collect, verify,

and report the Intelligence Bulletins, Intelligence Assessments, and other intelligence products issued were formalized in standard operating procedures at the unit level, but had not been formalized at the section level other than a production process checklist.

## **5. Intelligence Products Produced/Disseminated**

The FBI produces and disseminates various intelligence products designed to inform the U.S. intelligence and law enforcement communities of terrorist-related activities and issues. As previously discussed, these intelligence products include Intelligence Information Reports, Intelligence Assessments, and Intelligence Bulletins. The intelligence products are disseminated to U.S. intelligence and law enforcement communities by posting them on various community websites. The FBI's Intelligence Requirements and Collection Management Unit 1 (IRCMU1), which is part of the FBI's Directorate of Intelligence, maintains a spreadsheet application containing details of all Intelligence Information Reports, Intelligence Assessments, and Intelligence Bulletins disseminated by the FBI for use by the U.S. intelligence and law enforcement communities.

In its FY 2006 – FY 2011 Performance Plan, the FBI reported that 1,657 intelligence products were produced and disseminated to the intelligence community and other federal entities during FY 2004. As shown in the following chart, we found that the spreadsheet used by the IRCMU1 to track the intelligence products disseminated by the FBI did not match the number reported for FY 2004.



Source: FBI performance plans, OIG interviews with FBI staff, and analysis of documents provided by such staff

According to IRCMU1 officials, the accurate number of all intelligence products produced and disseminated by the FBI in FY 2004 was 6,739. However, the officials also said that the description of the statistic included



in the Performance Plan did not reflect the statistic the FBI intended to report. The reported number of 1,657 was intended to include only the Intelligence Information Reports produced and disseminated by the Counterintelligence Division rather than all intelligence products from the whole FBI as reflected in the statistic description. The officials said that the accurate number of Intelligence Information Reports for the Counterterrorism Division was 1,667 and that 1,657 were reported as a result of a clerical error. We were unable to verify the 1,667 reports officials said should have been reported, and we found that support was available for the 6,739 products officials said were produced and disseminated during FY 2004. Among the 6,739 were 4,682 Intelligence Information Reports produced and disseminated by the Counterintelligence Division.

Officials of the IRCMU1 told us that the dissemination statistics discussed here are an incomplete measure of FBI intelligence dissemination. The officials said that Intelligence Information Reports are disseminated through the FBI's Communications Center via the Special Automated Messaging Network, and for Intelligence Assessments and Intelligence Bulletins through the use of distribution lists. As a separate process, the FBI posts intelligence products to various websites that include Law Enforcement On Line and Secure Internet Protocol Routed Network, among others, as part of its ongoing effort to broadly share information that may be of value.

An IRCMU1 official told us that approximately 2,200 Intelligence Information Reports had been produced as of September 30, 2004, but not posted to various websites. While dissemination of the products occurs primarily through other means, posting of the products to the websites is important because it provides the U.S. intelligence and law enforcement communities with researchable material and common access to intelligence information. The IRCMU1 official told us that the divisions were not timely in posting the Intelligence Information Reports to the websites because of a shortage of personnel to do the posting. She identified 5,745 Intelligence Information Reports that had been produced by the Counterterrorism Division but not posted to the websites as of May 31, 2006. The IRCMU1 official said that as of November 2006 the problem of Intelligence Information Reports not being posted to the websites in a timely manner continued to exist.

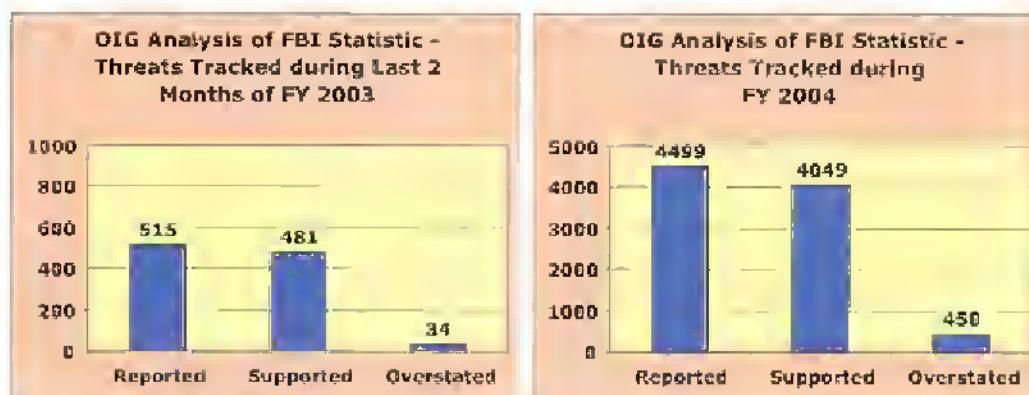
In summary, the FBI did not accurately report the number of intelligence products produced and disseminated to the U.S. intelligence and law enforcement communities during FY 2004 because the title of the reported statistic was poorly worded and did not represent the data that the FBI intended to report. Directorate of Intelligence officials told us that after FY 2004 the titles of statistics reported were changed to accurately reflect

the data presented. In addition, the officials said that the FBI has improved its statistical reporting system through the use of the FBI Intelligence Dissemination System, which became operational in FY 2005 and helped standardize production and collection of statistical data. The officials said that in FY 2005 the Directorate of Intelligence has instituted a monthly Program Review Process to provide a more mature system for gathering and verifying program data. The officials told us that internal controls are now in place for gathering and verifying the number of Intelligence Bulletins, Intelligence Assessments, and Intelligence Information Reports that have been posted to the websites by the four FBI divisions.

## 6. Terrorist Threats

The FBI's Counterterrorism Division oversees FBI counterterrorism initiatives, and the Division's Threat Monitoring Unit (TMU) supports the FBI's role by receiving, assessing, and disseminating threat information and suspicious activity. The TMU reports threats tracked to the Counterterrorism Division's Administrative Section.

In the FY 2006 President's Budget Request to Congress, the FBI reported 515 terrorism threats tracked during FY 2003, and 4,499 during FY 2004. However, the number reported for FY 2003 represented only the last 2 months of FY 2003 instead of the entire year. As shown in the following charts, we found that the database used by the TMU to track threats did not support the numbers reported for FY 2003 or FY 2004.



Source: FBI budget requests, OIG interviews with FBI staff, and analysis of documents provided by FBI staff

The inaccuracies occurred primarily because the reported statistics included threats that were counted multiple times. According to a TMU official, the TMU reported threats being tracked each month and the subsequent month's count of threats tracked included threats counted during previous months that were still being investigated and tracked. The threats

reported each month of the fiscal year were then added together to come up with the total threats tracked during the year. Consequently, the total threats reported as tracked during FY 2003 and FY 2004 included duplicate threats.

Through further discussions with TMU officials, we also determined the total number of threats reported as tracked during FY 2003 and FY 2004 did not include all of the threats tracked by the FBI. The reported threats included only threats tracked by the TMU and, according to a TMU official, this accounted for only about 40 percent of the threats actually tracked by the FBI. The TMU official said that the remaining 60 percent of threats tracked by the FBI were tracked by FBI field offices during FY 2003, and by the field offices, the FBI's Counterterrorism Watch Unit, and the FBI's International Terrorism Operations Sections during FY 2004.<sup>30</sup> As a result, the number of threats actually tracked by the FBI during FY 2003 and FY 2004 was significantly understated.

In addition to inaccurately reporting the threats tracked, the FY 2006 President's Budget Request to Congress significantly overstated the change between the number of threats tracked during FY 2003 and FY 2004. As discussed previously, the FBI reported 515 threats tracked for FY 2003 but the number reported represented only the last 2 months of FY 2003. The FBI reported 4,499 threats tracked for FY 2004 and reported an 800 percent increase in threats tracked for FY 2004 (4,499 FY 2004 threats minus 515 FY 2003 threats divided by 515 FY 2003 threats). But since the threats reported for FY 2003 were for 2 months and the threats reported for FY 2004 were for 12 months, the percent change from FY 2003 to FY 2004 was significantly overstated.

According to a TMU official, from September 1, 2003, until August 31, 2004, the TMU tracked threats received by reviewing e-mails, phone calls, and threat matrix reports. Threat matrix reports are daily reports that identify various threats against the United States and are

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<sup>30</sup> The FBI's Counterterrorism Watch Unit and International Terrorism Operations Section are part of the FBI Counterterrorism Division and support the FBI's counterterrorism mission. The Counterterrorism Watch Unit is the FBI's 24-hour global command center for terrorism prevention operations. The FBI's International Terrorism Operations Sections (ITOS) are split into two sections known as ITOSI and ITOSII. ITOSI supports, coordinates, and provides oversight of FBI international counterterrorism operations related to al Qaeda and other Sunni extremist groups. ITOSII supports, coordinates, and provides oversight of FBI international counterterrorism operations related to other groups, such as Hezbollah, HAMAS, and Palestinian Islamic Jihad, as well as the terrorist threats from state sponsors of terrorism.



produced by the Terrorist Threat Integration Center (TTIC).<sup>31</sup> The TMU then manually entered the threats into a local database application. Since September 1, 2004, threats classified up to the Secret level are entered by many FBI components into the FBI's Guardian Threat Tracking System.<sup>32</sup> However, because Guardian is only classified up to the Secret level, a small percentage of cases (less than 1 percent according to a TMU official) are still entered in the TMU's local database application. The Guardian system was pilot tested in 8 FBI field offices beginning on July 8, 2004, and was on-line in all 56 FBI field offices by the end of September 2004. By the end of October 2004, the Guardian system was on-line in all 58 FBI Legal Attaché offices throughout the world.<sup>33</sup> According to the TMU official, the Guardian system now tracks all threats reported to the FBI, except those threats that the field offices choose not to enter into the Guardian system. The use of Guardian to report threat data in the future should significantly improve the accuracy of the number of threats reported. For FY 2005, the Guardian system contained 40,041 threats tracked by the FBI, which is significantly greater than the number of threats reported as tracked in FY 2003 and FY 2004. Guardian tracks these threats until they are mitigated and resolved.

TMU officials told us the inaccuracy of the threats reported in the FY 2006 budget could have resulted from how the Counterterrorism Division's Administrative Section requested the statistics. Initially, the requests for the statistics were very broad such as "How many threats were entered in the system?" Later, the requests for statistics were narrowed down to "How many threats are you (TMU) tracking?" The TMU officials told us they were not aware of how the requested information was being used by the requestors. Other than how the Counterterrorism Division's Administrative Section requested the threat data, the officials did not know why the threats were inaccurately reported for FY 2003 and FY 2004.

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<sup>31</sup> TTIC is a multi-agency center established in 2003 in which personnel from the Central Intelligence Agency, the FBI, the Departments of Homeland Security and Defense, and other agencies attempt to merge and analyze terrorist-related information collected domestically and abroad to form a comprehensive picture of threats against the United States.

<sup>32</sup> The Guardian system is designed to make immediately available threat and suspicious activity information to all system users, and provide all users with the capability to search all incidents for threat trend analysis.

<sup>33</sup> The FBI's Legal Attaché offices are offices staffed with FBI agents and support staff in U.S. embassies and consulates.

## **7. Terrorist Threats to Transportation and Facilities and 8. Terrorist Threats to People and Cities**

The FBI's Counterterrorism Watch Unit (Unit), which is part of the FBI's Counterterrorism Division, monitors and tracks suspicious incidents and threats received through e-mails and telephone calls from FBI field offices, FBI Executive staff, Legal Attaché offices, state and local law enforcement, and other sources. The Unit records the suspicious incidents and threats in an electronic file called an Operational Support Log. An Intelligence Analyst in the Unit periodically reviews the Operational Support Log and, using his or her judgment and experience, decides how each threat should be categorized. Two categories of threats are threats to transportation and facilities and threats to people and cities. After the Intelligence Analyst reviews all the entries in the Operational Support Log, the analyst enters the categorization of the threats into a local spreadsheet application. This application is the source of threat data reported in the FBI's annual performance plans. After the threats are categorized, the Unit disseminates the threats to the appropriate FBI offices for investigation.

We found that the Counterterrorism Watch Unit has not established adequate internal controls to ensure that the threats are properly categorized. The Unit's Watch Commander reviews the Operational Support Log entries to ensure that all the suspicious incidents and threats are included, but no one reviews the Intelligence Analyst's decisions on how the threats are categorized. Initially, the Acting Unit Chief told us there are standard operating procedures in place, but we found those procedures do not provide controls for ensuring the accurate categorization of the threats. The Counterterrorism Watch Unit issued additional standard operating procedures in July 2006 for the unit operations. We found that the new standard operating procedures contained no internal controls to ensure the accurate categorization of threats. The procedures provide for the Watch Commander to review the log entries to ensure that all suspicious incidents and threats are included. However, the procedures do not include steps for a supervisor to review the Intelligence Analyst's decisions on how the threats are categorized.

**Threats to Transportation and Facilities.** In its FY 2006 - FY 2011 Performance Plan, the FBI reported 547 threats were made to transportation and facilities during FY 2004. The spreadsheet used by the FBI's Counterterrorism Watch Unit to track the number of threats to transportation and facilities agreed with the number of threats reported in the FBI's FY 2006 - FY 2011 Performance Plan for FY 2004. However, we determined that the

547 threats reported for FY 2004 were for only 9 months of the year, from January through September 2004. A Unit official told us that threat data for all of FY 2004 was not reported because of the timing of the request from the Counterterrorism Division's Administrative Section. According to the Unit official, the Unit began capturing threats in May or June 2004. In December 2004 or January 2005, the Counterterrorism Division's Administrative Section requested the threat data for FY 2004. At that time, the Unit had begun identifying, categorizing, and counting the threats prior to May or June 2004 but had not completed the process. Therefore, the Unit reported the threat data for the 9 months (January 2004 through September 2004) that had been completed. As a result, the FBI significantly understated the threats to transportation and facilities reported for FY 2004.

**Threats to People and Cities.** In its FY 2006 - FY 2011 Performance Plan, the FBI reported 820 threats were made to people and cities during FY 2004. The spreadsheet used by the FBI's Counterterrorism Watch Unit to track the number of threats to people and cities agreed with the number of threats reported in the FBI's FY 2006 - FY 2011 Performance Plan for FY 2004. However, as was the case for threats to transportation and facilities, the 820 threats to people and cities reported for FY 2004 were for only 9 months of the year. As a result, the FBI significantly understated the threats to people and cities reported for FY 2004.

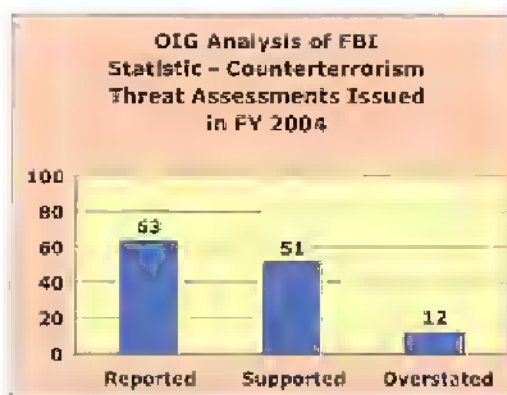
## **9. Counterterrorism Threat Assessments**

Counterterrorism Threat Assessments are essentially the same as Intelligence Assessments, except for those jointly written with other agencies.<sup>34</sup> The FBI's TWWU maintained a word processing file that contains details of the Counterterrorism Threat Assessments issued.

In its FY 2006 - FY 2011 Performance Plan, the FBI reported 63 Counterterrorism Threat Assessments were issued during FY 2004. As shown in the following chart, we found that the word processing file maintained by the TWWU to track the number of Counterterrorism Threat Assessments issued did not support the number reported for FY 2004.

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<sup>34</sup> A former TWWU official told us that the FBI no longer uses the term Counterterrorism Threat Assessments and these products are now called Intelligence Assessments.



Source: FBI performance plans, OIG interviews with FBI staff, and analysis of documents provided by FBI staff

According to an official of the former TWWU, the TWWU inadvertently reported 12 assessments issued during FY 2003 as being issued during FY 2004. The former TWWU official told us that he is responsible for recording and tracking the assessments in the word processing file. The official said that he used an internal checklist to ensure the content of the threat assessments was accurate and properly disseminated. The official also said that he periodically checks the word processing file to ensure it is accurate and up-to-date. However, we determined that the checklist did not formalize the collection, verification, and reporting process for threat assessments. At a minimum, the process should include controls such as documenting: (1) the source of the statistic, (2) the procedures used to track or gather the statistic, and (3) the methodologies and procedures used to verify the accuracy of the statistic.

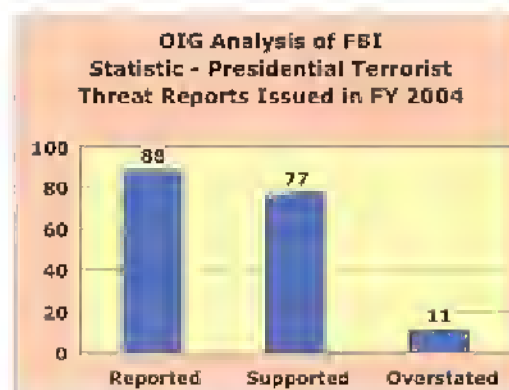
According to a TAU official, in June 2006, the CTAS established a new tracking and monitoring intelligence production and dissemination system where all Intelligence Bulletins, Intelligence Assessments, and other intelligence products are logged into a spreadsheet application. As of November 2006, the procedures on how to collect, verify, and report the Intelligence Bulletins, Intelligence Assessments, and other intelligence products issued were formalized in standard operating procedures at the unit level, but had not been formalized at the section level other than a production process checklist.

## **10. Presidential Terrorist Threat Reports**

Presidential Terrorist Threat Reports, now known as National Terrorism Bulletins, are produced by the National Counterterrorism Center from intelligence products disseminated by agencies in the United States intelligence community, including the Central Intelligence Agency, the FBI,

and Department of Defense intelligence components.<sup>35</sup> The reports are provided to senior intelligence officials in the White House and U.S. intelligence community agencies. The FBI's Global Terrorism Analysis Unit (GTAU) maintains a spreadsheet application that contains details of the Presidential Terrorist Threat Reports issued.

In its FY 2006 - FY 2011 Performance Plan, the FBI reported that 88 Presidential Terrorist Threat Reports were issued during FY 2004. As shown in the following chart, we found that the spreadsheet application maintained by the GTAU to track the Presidential Terrorist Threat Reports issued did not support the number issued for FY 2004.



Source: FBI performance plans, OIG interviews with FBI staff, and analysis of documents provided by FBI staff

A GTAU official told us the number of Presidential Terrorist Threat Reports issued was overstated because: (1) the spreadsheet database was probably queried for the statistic by calendar year or for another specific time period instead of by fiscal year, and (2) the request for the statistic was worded in such a way that it could produce different answers. However, the GTAU official did not maintain documentation to show how the request for the FY 2004 data was worded.

According to a GTAU official, the FBI units that issue the Presidential Terrorist Threat Reports enter the reports issued into a database. The GTAU relies on other FBI units to enter all the Presidential Terrorist Threat Reports issued in the database. We found that no internal controls exist regarding gathering and verifying the accuracy of Presidential Terrorist Threat Reports tracked in the database. A GTAU official said that when she assumed her

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<sup>35</sup> While the National Counterterrorism Center is outside the control of the Department of Justice, the FBI participates in the Center and tracks the number of Presidential Terrorist Threat Reports issued by the Center.

job in February 2004, there were no formalized procedures for collecting, verifying, and reporting the Presidential Terrorist Threat Reports issued and no formalized procedures have been developed since.

## **EOUSA TERRORISM STATISTICS**

We tested the following 11 operational statistics that EOUSA reported in either the President's Budget Requests to Congress for FY 2004, FY 2005, and FY 2006, or the USAOs FY 2004 Annual Statistical Report.

- Number of cases filed – defendants for program activity anti-terrorism in FY 2002, FY 2003, and FY 2004;<sup>36</sup>
- Number of terrorism convictions in FY 2003 and FY 2004;<sup>37</sup>
- Number of terrorism-related convictions in FY 2003 and FY 2004;<sup>38</sup>
- Number prosecuted – defendants for program activity anti-terrorism in FY 2002;
- Number found guilty – defendants for program activity anti-terrorism in FY 2002;
- Number of terrorism cases tried in FY 2001;
- Number sentenced to prison – defendants for program activity anti-terrorism in FY 2003 and FY 2004;
- Number of terrorism and anti-terrorism cases against defendants that were terminated in FY 2003 and FY 2004;

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<sup>36</sup> The number reported for FY 2004 was reported twice – once in the U.S. Attorneys FY 2004 Annual Statistical Report and once in the FY 2006 President's Budget Request to Congress.

<sup>37</sup> EOUSA defines a terrorism conviction as domestic and international incidents that involve acts, including threats or conspiracies to engage in such acts, which are violent or otherwise dangerous to human life and which appear to be motivated by an intent to coerce, intimidate, or retaliate against a government or a civilian population.

<sup>38</sup> EOUSA defines a terrorism-related conviction as incidents involving terrorism-related hoaxes, terrorist financing, and a matter or case where the underlying purpose or object of the investigation is anti-terrorism related.

- Number of terrorism and anti-terrorism cases pending at the end of FY 2002, FY 2003, and FY 2004;
- Number of defendants the U.S. Attorneys terminated terrorism and anti-terrorism cases against in FY 2004; and
- Percentage of defendants whose cases were terminated that were convicted in FY 2003.

EOUSA is responsible for tracking and analyzing data related to the work of the 94 USAOs in the development of budget and litigative priorities. EOUSA reports in its annual budgets and statistical reports based on data entered by the USAOs into the LIONS system. The LIONS system is a database with on-line capabilities that permit the USAOs and EOUSA to compile, maintain and track information relating to defendants, crimes, criminal charges, court events, and witnesses.

### **Inaccuracies in LIONS Data Reported by GAO**

In its January 2003 report entitled *Justice Department, Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Statistics*, the GAO addressed the USAOs' misclassifications of conviction data in LIONS as terrorism-related despite a semiannual effort by EOUSA requiring managers in the USAOs to certify the accuracy of the case data. EOUSA noted that new anti-terrorism codes were not established until August 2002, one month prior to the end of the fiscal year. EOUSA officials attributed discrepancies to limited time for the USAOs to thoroughly reevaluate caseload and investigative data dating back to the beginning of FY 2002 and to reclassify the applicable cases. The GAO recommended that the Attorney General, in accordance with federal internal control standards, implement a formal system to oversee and validate the accuracy of case classification and conviction data entered in LIONS by the USAOs.

As part of this audit, we contacted the GAO to determine the status of this recommendation. According to a GAO staff member, EOUSA was required to provide Congress with a written response within 60 days of the report's issuance in January 2003. The GAO staff member said that the GAO did not believe that EOUSA's letter to Congress, dated April 7, 2003, showed adequate actions had been taken by the USAOs to correct the classification problem GAO identified. Specifically, according to the GAO staff member, EOUSA did not show that it had established a formal system to oversee and validate the accuracy of the case classification and conviction data entered in



LIONS. In August 2006, we discussed with EOUSA staff corrective actions taken by the USAOs in response to the GAO recommendations.

An EOUSA official told us that EOUSA had taken steps to correct the problem identified by GAO by establishing procedures, effective October 22, 2004, for maintaining accurate and reliable caseload data. The EOUSA official also said that the United States Attorneys were instructed via memoranda from the Director of EOUSA to certify their respective caseload data as far back as 1997. Those procedures were not documented as part of the formal United States Attorneys' Procedures until October 22, 2004. The formalized procedures include several report tools that the Assistant United States Attorneys (AUSAs) can use to ensure the accuracy of LIONS data before certifying the data. The report tools include the: (1) Alcatraz Case Certification, (2) Case Certification by Event, (3) AUSA Workload Reports, and (4) Alternate District Reporting Methods.<sup>39</sup> In September 2006 the GAO noted the actions taken by EOUSA and closed its recommendation.

The EOUSA official also told us that the AUSAs are encouraged to use the report tools to ensure accuracy of the LIONS data, but use of the report tools is not required. The EOUSA official said that regardless of what the AUSAs do to ensure the accuracy of the LIONS data, the United States Attorneys must certify the accuracy of all cases, matters, and appeals in LIONS twice a year. The EOUSA official also commented that the AUSAs realize how important it is for them to properly code cases and they take those responsibilities seriously. The EOUSA official said that in view of the required certifications, they had not required the USAOs to implement additional internal controls to ensure the accuracy of LIONS data. Moreover, the EOUSA official told us that EOUSA conducts internal evaluation reviews of the USAOs every 3 to 4 years using AUSAs from different USAOs than the USAO being reviewed. Part of the review involves verifying whether the USAs completed the semiannual certifications of the LIONS data, but the reviews do not involve testing of the accuracy of LIONS data.

As detailed below, our testing showed that terrorism-related statistics reported by EOUSA and the USAOs were not accurately reported. This

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<sup>39</sup> The Alcatraz Case Certification report is a case management software application tool available to USAOs to assist in managing their district's caseload in LIONS. The Case Certification by Event report is a LIONS standard report that lists civil or criminal cases that have been certified in LIONS by using the event code CERT. The AUSAs Workload Reports are used to certify the accuracy of matter, cases, and appeals. The Alternate District Reporting Methods allow USAOs to use district generated reports to certify caseloads consistent with local work flow.



indicates that stronger internal controls for verifying the accuracy of the LIONS data are needed. Neither the semiannual certifications by the AUSAs nor the triennial evaluation reviews have proven sufficient to ensure the accuracy of the LIONS data.

### **OIG Testing of EOUSA and USAO Terrorism-Related Statistics**

For each of the 11 statistics tested, we reviewed supporting evidence, as well as the internal controls in place, to examine whether the statistics were accurately reported. For a sample of the transactions reported for each statistic we reviewed, we requested USAO officials provide documentation from the case files to support that the transaction was related to terrorism. If we could not identify a terrorism link from the initial documentation provided, we asked the USAO officials to identify and provide to us evidence of the terrorism link. We also reviewed the evidence provided to determine if the transaction occurred during the period reported. If the USAO officials did not identify the terrorism link or the transaction did not occur in the period reported, we considered the transaction inaccurately reported.

In August 2006, we briefed EOUSA officials on the results of our testing that showed EOUSA did not accurately report the numbers reported for any of the 11 statistics tested. EOUSA officials disagreed with our conclusion that the statistics were inaccurately reported. The officials requested additional time to review the transactions we questioned and provide additional documentation to support the numbers reported. We agreed with the request and EOUSA subsequently provided additional documentation that they believed supported most of the transactions we questioned.

We reviewed the additional documentation and determined that it supported only a minor number of the transactions we tested. We did not accept much of the support provided by EOUSA officials because we disagree with them on cases that can reasonably be counted in the "anti-terrorism" category.

The EOUSA LIONS Manual defines the anti-terrorism program activity as follows.

Any matter or case where the underlying purpose or object of the investigation is anti-terrorism (domestic or international). [Underlined in the original.] This program category is meant to capture United States Attorney Office activity intended to prevent or disrupt potential or actual

terrorist threats where the offense conduct is not obviously a federal crime of terrorism. To the extent evidence or information exists, in any form, reasonably relating the case to terrorism or the prevention of terrorism (domestic or international), the matter should be considered "anti-terrorism." For example, a case involving offenses such as immigration violations, document fraud, or drug trafficking, where the subject or target is reasonably linked to terrorist activity, should be considered an "anti-terrorism" matter or case. Similarly, a case of identity theft and document fraud where the defendant's motivation is to obtain access to and damage sensitive government facilities should be considered "anti-terrorism."

EOUSA's definition indicates the anti-terrorism program activity is meant to capture activity related to prevention or disruption of terrorist threats where the conduct is not obviously a crime of terrorism. However, the two examples cited indicate that the subject, target, or defendant must be "reasonably linked to terrorist activity" to record the case under the anti-terrorism program activity. Taken as whole, we believe this definition establishes that a case or defendant must have some identifiable link to terrorism to be categorized as an "anti-terrorism" case.

EOUSA disagrees with our interpretation of the definition of the anti-terrorism program activity. EOUSA and USAO officials told us they believe they correctly reported defendants under the anti-terrorism program activity because almost all the defendants reported under this program activity were arrested as the result of either operations carried out to prevent terrorism or through JTTF activities.<sup>40</sup> For example, Operation Tarmac was a worksite enforcement operation launched in November 2001 at the nation's airports. During this operation, Department and other federal agents went into regional airports and checked the immigration papers of airport workers. The agents then arrested any individuals who used falsified documents, such as social security numbers, drivers' licenses, and other identification documents, to gain employment. EOUSA officials told us they believe these defendants are properly coded under the anti-terrorism program activity. However, in response to our question, EOUSA's Acting Deputy Director told us that EOUSA could also properly code as anti-terrorism all cases arising from any illegal immigrants arrested crossing the southwest border into the United States, but have not done so. We do not agree that law enforcement

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<sup>40</sup> The JTTFs are squads within the FBI's field offices that focus primarily on addressing terrorism threats and preventing terrorist incidents.

efforts such as these should be counted as “anti-terrorism,” unless as the LIONS Manual indicates, the subject or target is reasonably linked to terrorist activity.

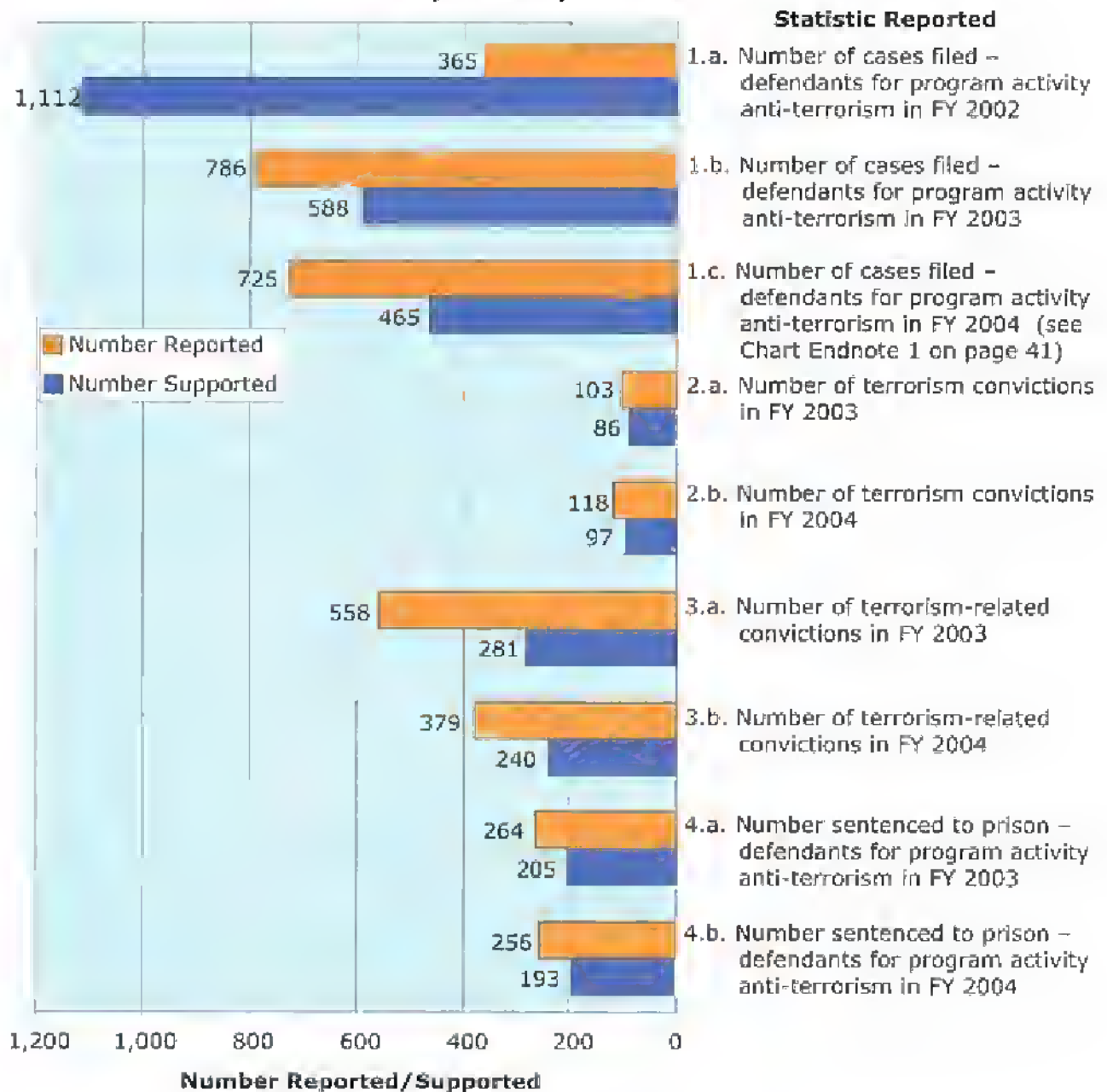
For many of the transactions we found to be without a link to terrorism, EOUSA staff said the transactions were supported because the related cases were referred to the USAOs by a JTTF. To test the extent to which JTTF-referred cases consistently had a link to terrorism, we judgmentally sampled 21 JTTF-referred transactions and requested additional documentation on the related cases to show a reasonable link to terrorist activity. EOUSA supported a terror link for only 8 of 21 sampled JTTF-referred transactions. Based on this test, some JTTF cases show a link to terrorism, but we do not consider the remaining JTTF-referred transactions supported simply because those cases were referred by a JTTF.

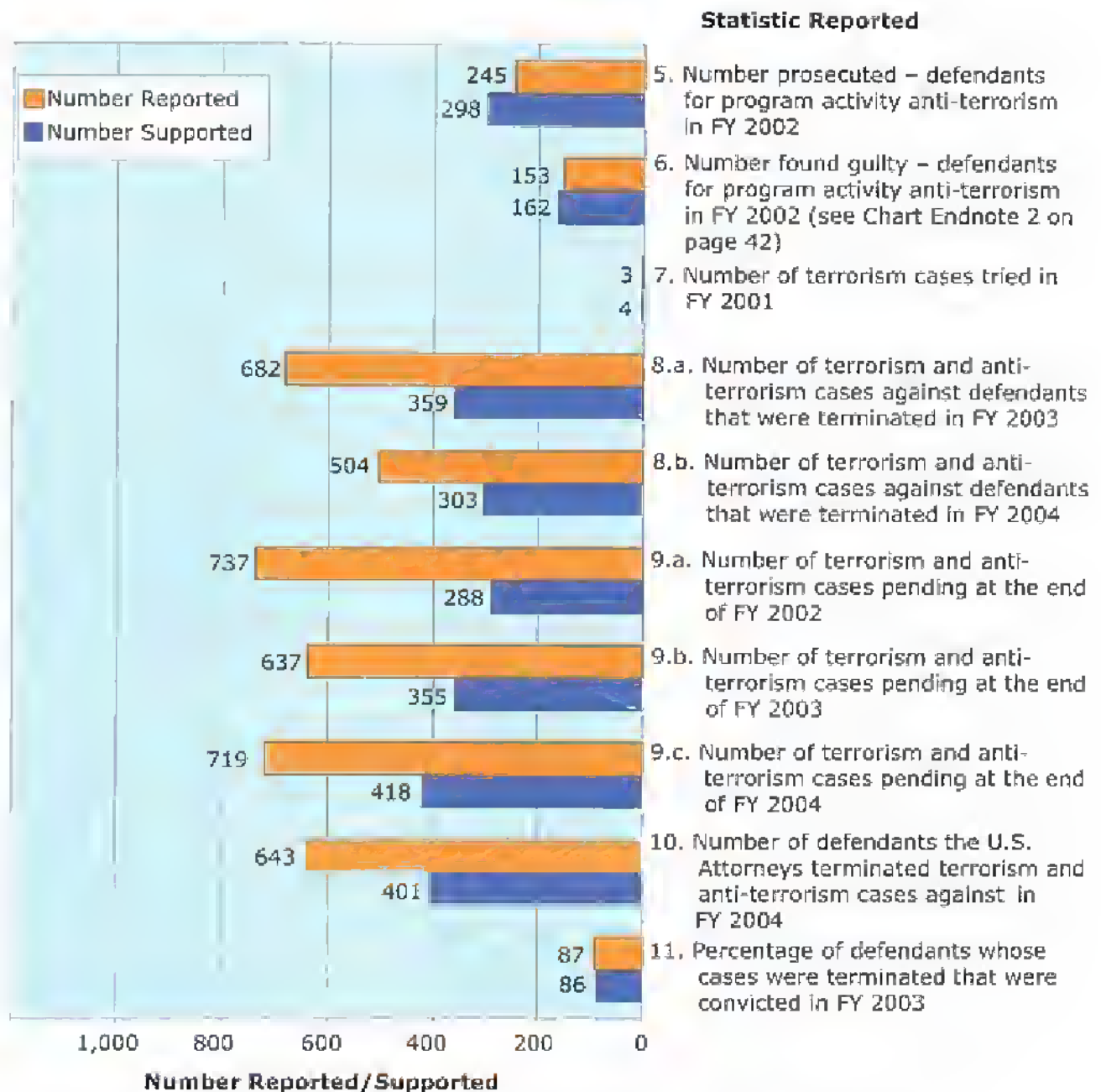
We also acknowledge that operations such as Operation Tarmac and JTTF cases originate in concerns regarding terrorism. However, EOUSA could fairly and accurately report the successes of these operations without implying that all of the resulting cases are terrorism related. We are concerned that EOUSA’s view of the anti-terrorism category permits criminal cases arising from virtually any federal law enforcement effort, including border enforcement activities, to be categorized as anti-terrorism regardless of the actual circumstances. In our review of the statistics reported by EOUSA, we looked for and accepted any evidence of a reasonable terrorism linkage. However, we found many cases involving offenses such as immigration violations, document fraud, or drug trafficking, where the investigation showed that the subject or target had no link at all to terrorist activity, but the case was classified as an anti-terrorism case. In accordance with EOUSA’s anti-terrorism definition, we did not accept those cases as having support for coding in the anti-terrorism category.

After updating our results based on the additional documentation provided by EOUSA and based on our understanding of the anti-terrorism definition, we concluded that EOUSA and the USAOs did not accurately report the 11 statistics we tested as shown in the charts in the following sections of this report. The practice of classifying cases as anti-terrorism related affects the discussion of inaccurately reported statistics on defendants in cases filed (EOUSA Statistic 1 on page 42), terrorism convictions (EOUSA Statistic 2 on page 46), terrorism-related convictions (EOUSA Statistic 3 on page 50), defendants sentenced to prison (EOUSA Statistic 4 on page 53), terminated terrorism and anti-terrorism cases (EOUSA Statistic 8 on page 59), pending terrorism and anti-terrorism cases (EOUSA Statistic 9 on page 62), defendants for terminated terrorism and anti-terrorism cases (EOUSA Statistic 10 on page 66), and percentage of

defendants whose terrorism and anti-terrorism cases were terminated and who were convicted (EOUSA Statistic 11 on page 69).

### OIG Analysis of Terrorism-Related Statistics Reported by EOUSA





Source: EOUSA and USAO budgets, annual statistical reports, and LIONS data; OIG interviews with EOUSA and USAO staff; and analysis of documents provided by EOUSA and USAO staff

#### Chart Endnotes

1. The 725 reported for FY 2004 was reported twice – once in the U.S. Attorneys FY 2004 Annual Statistical Report and once in the FY 2006 President's Budget Request to Congress.

Chart Endnotes – continued

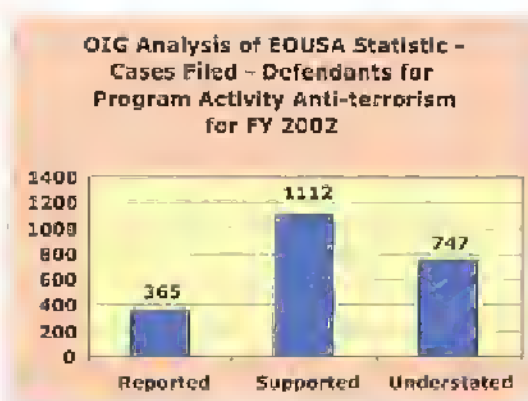
2. This statistic includes defendants that either pleaded guilty or who were convicted. We did not find where EOUSA reported this statistic for years after FY 2002.

### **1. Defendants in Cases Filed**

In the FY 2004, FY 2005, and FY 2006 President's Budget Requests to Congress, EOUSA reported the following number of defendants in cases filed by the USAOs under the anti-terrorism program activity.

- 365 for FY 2002
- 786 for FY 2003
- 725 for FY 2004

We reviewed LIONS reports showing the number of defendants in cases filed under the anti-terrorism program for these three fiscal years. For FY 2002, the LIONS data did not match the number reported in the annual budget request as shown in the following chart.



Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

Because EOUSA could not provide a list from LIONS of the 365 defendants against whom cases were filed under the anti-terrorism program activity in FY 2002, we did not perform additional testing of the LIONS data provided. This situation also applies to the following discussions of inaccurately reported statistics on defendants prosecuted (EOUSA Statistic 5 on page 57), defendants found guilty (EOUSA Statistic 6 on page 57), and terrorism cases tried (EOUSA Statistic 7 on page 58).

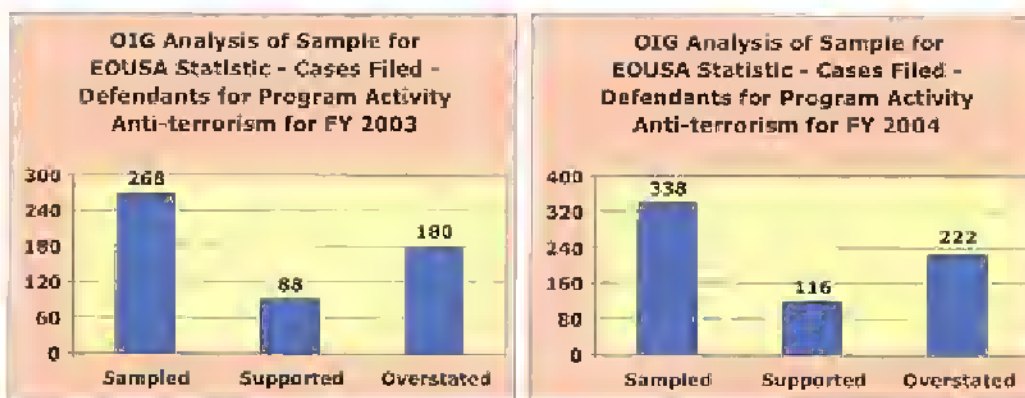
An EOUSA official provided the following explanation for the statistic being under-reported for FY 2002. In August 2002, EOUSA provided the USAOs new anti-terrorism category codes for categorizing cases entered into LIONS. At that time, EOUSA asked all 94 USAOs to review all FY 2002 cases entered into LIONS and to recode the cases before the close of the fiscal year using the new anti-terrorism category codes, if appropriate. According to the EOUSA official, not all USAOs had finished recoding their cases prior to the close of FY 2002. Therefore, the statistic was understated. This situation also applies to the discussions of inaccurately reported statistics on defendants prosecuted (EOUSA Statistic 5 on page 57), and defendants found guilty (EOUSA Statistic 6 on page 57).

For FY 2003 and FY 2004, the LIONS data agreed with the numbers reported by EOUSA in the budget requests for those years. We selected a judgmental sample of the defendants reported and performed additional testing to determine the accuracy of the reported numbers. We selected 268 of the 786 defendants in cases reported as filed during FY 2003, and 338 of the 725 defendants in cases reported as filed during FY 2004. We reviewed case file documentation and interviewed USAO officials to determine if the cases were properly reported as anti-terrorism cases based on EOUSA's definition for this program activity. We found that, in the cases we tested, the USAOs generally reported cases as anti-terrorism cases when the underlying purpose or object of the investigation was intended to prevent terrorism, regardless of whether the subject, target, or defendant was reasonably linked to terrorist activity based upon the results of the investigation. The overstatements in the following charts reflect defendants charged with an offense not readily identifiable as terrorism-related, and for which the USAOs did not provide information of a terrorism link.<sup>41</sup>

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<sup>41</sup> The number supported for these statistics are based on a sample of transactions reported. Therefore, the number supported could be less than shown in the table and the difference could be more based on a 100-percent review of transactions reported. This situation is also applicable to our testing of EOUSA statistics on terrorism convictions, terrorism-related convictions, defendants sentenced to prison, terrorism and anti-terrorism cases pending, and defendants for terminated terrorism and anti-terrorism cases.





Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

Below are specific details for examples of unsupported cases. In each case, we reviewed information in the case file provided by the USAOs to determine if it established a link to terrorism. If the case file information did not show a terrorism link, we asked the USAO officials to provide additional evidence of a terrorism link. In each example, the USAOs did not provide information that the subject was linked to terrorist activity.

- The subject, in exchange for money, arranged six marriages between aliens, primarily Tunisian nationals, and U.S. citizens. The subject was sentenced to 12 months and 1 day on each of six counts of aiding and abetting marriage fraud to be served concurrently. The case file information provided by the USAO contained no indication that the subject or the six aliens were linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA commented that the subject aided, abetted, counseled, commanded, induced, and procured fraudulent marriages of Middle Eastern and African males, but the AUSA provided no information to link the subject to terrorism.
- In another case of marriage fraud, a subject entered into a marriage for the purpose of evading the immigration laws. The subject filed on his own behalf a Petition for Alien Relative requesting lawful permanent alien status based on his fraudulent marriage to a U.S. citizen. The subject pleaded guilty to marriage fraud and was sentenced to time served. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that: (1) the case was categorized as anti-terrorism based on evidence or information which relates to the "prevention of terrorism," and (2) the evidence or information is identical or



similar to the criteria for identifying potential terrorist cases listed in a November 2001 memorandum from the Assistant Attorney General for the Criminal Division.<sup>42</sup> However, the AUSA provided no details of the evidence or information to support a link to terrorist activity. Absent information of the subject's link to terrorism, the reporting of this subject as terrorism-related was unsupported.

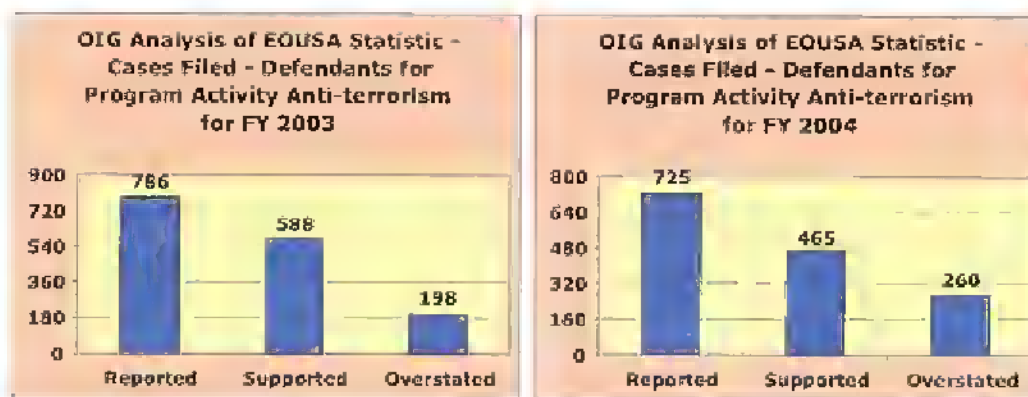
- The subject was charged with dealing firearms without a license. The case was pending at the time of our review. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that the case should not have been coded as an anti-terrorism case.
- To obtain a passport, a Mexican national falsely identified himself in a passport application as another individual. The subject pleaded guilty to making a false statement in a passport application and was sentenced to time served. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. We asked an AUSA to provide an explanation of the subject's link to terrorism, but the AUSA did not provide any additional explanation.
- The subject was charged with: (1) obtaining naturalization unlawfully by making false representations on a naturalization application, and (2) making a false statement in a passport application. At the time of our audit fieldwork, the case against this subject was pending. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. When we asked the AUSA to provide additional information to support a link to terrorist activity, the USAO provided no additional information.

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<sup>42</sup> The November 13, 2001, memorandum sent to Anti-terrorism Task Force Coordinators identified categories of actions that past terrorist cases have involved such as using false or multiple identification and travel documents, attending paramilitary and firearms training, photographing and surveillance of landmarks, using the computer and Internet to communicate, and committing immigration fraud. For each category, the memorandum described examples of terrorist-related activity from prior terrorism cases. However, the memorandum emphasized that any one criterion alone would not likely support a reasonable conclusion that terrorist activity or potential terrorist activity was present.

We also found that for 34 of the 268 sampled defendants for FY 2003, including 16 of the 180 defendants not linked to terrorism, either the cases were not filed in the year reported or the USAOs could not provide documentation to show the cases were filed in the year reported. This same issue occurred for 68 of the 338 sampled defendants for FY 2004, including 30 of the 222 defendants not linked to terrorism, as either the cases were not filed in the year reported or the USAOs could not provide documentation to show the cases were filed in the year reported.

Overall, considering both the defendants not linked to terrorism and the cases not filed in the year reported, EOUSA overstated the number of defendants in cases filed under the anti-terrorism program activity for FY 2003 and FY 2004 as shown in the following charts.<sup>43</sup>



Source: EOUSA and USAO budgets and LIONS data, OIG Interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

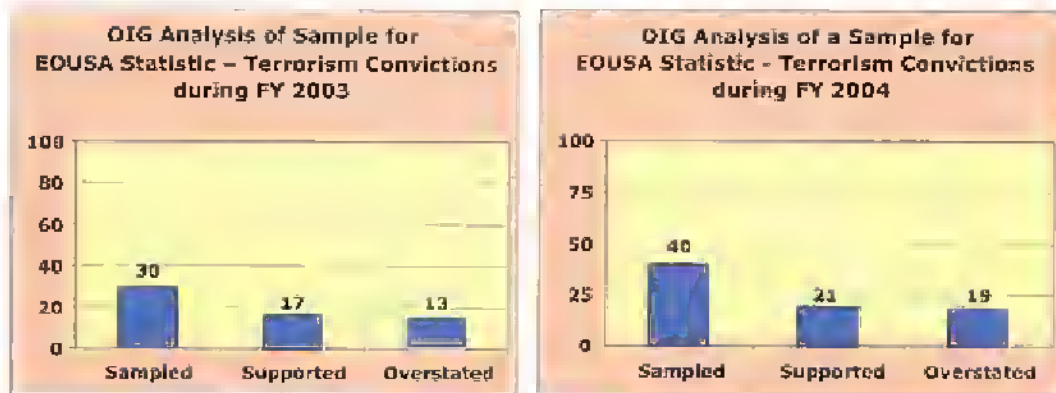
## 2. Terrorism Convictions

In the FY 2005 and FY 2006 President's Budget Requests to Congress, EOUSA reported 103 terrorism convictions for FY 2003 and 118 terrorism convictions for FY 2004. We reviewed LIONS reports supporting the number of terrorism convictions for FYs 2003 and 2004 and found that the LIONS data agreed with the numbers reported in the budget requests for both years.

We then selected a judgmental sample of the terrorism convictions reported for FY 2003 and FY 2004 and performed additional testing to determine the accuracy of the reported numbers. We selected 30 of the 103 terrorism convictions reported for FY 2003, and 40 of the 118 terrorism convictions reported for FY 2004. We then requested that USAO officials

<sup>43</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.

provide information from the case files to show the subject was linked to terrorist activity. If the case file information provided did not show a terrorism link, we asked USAO officials to provide additional information of a terrorism link. The overstatements in the following charts reflect defendants for which the USAOs did not provide information of the terrorism link.<sup>44</sup>



Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

Below are specific details for examples of unsupported cases.

- The subject was charged with: (1) making a false statement on an airport security badge application by indicating he had not been convicted of a disqualifying crime, when in fact he had; and (2) possessing with the intent to distribute 34 grams of crack cocaine. The subject pleaded guilty to possession of crack cocaine with the intent to distribute and was sentenced to 70 months in prison. The charge for making a false statement on an airport security badge application was dismissed. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that the subject was arrested as part of Operation Plane View, which was an operation similar to Operation Tarmac where Department and other federal agents went into the local airport and arrested individuals who used falsified documents such as social security numbers, drivers' licenses, and other identification documents to gain employment at airport facilities. The AUSA provided no additional information that linked the subject to terrorist activity.

<sup>44</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.

- The subject was charged with knowingly and unlawfully possessing a Resident Alien card (a document issued by the Department of Homeland Security and used for entry into and as evidence of authorized stay and employment in the United States). The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. The subject pleaded guilty to possession of a false immigration document and was sentenced to time served in federal custody. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that this was a prevention case to restore the integrity of the immigration identification systems and procedures in the United States. The AUSA provided no additional information to link the subject to terrorist activity.
- The subject was charged with making a false statement on an airport security badge application. On the application he asserted that during the 10 years preceding the date of the application he had not been convicted of any disqualifying crimes listed on the application when in fact he had been so convicted. The subject pleaded guilty to making false statements and was sentenced to 4 months in prison with credit for time served. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that the subject was arrested as part of Operation Fly Trap, which was an operation similar to Operation Tarmac and Operation Plane View, where Department and other federal agents went into the local airport and arrested individuals who used falsified documents such as social security numbers, drivers' licenses, and other identification documents to gain employment at the airport facilities. The AUSA provided no additional information that linked the subject to terrorist activity.
- A Mexican national falsely identified himself as a U.S. citizen on an employment eligibility verification form so he could obtain employment in the United States. Subsequently, the subject filed a Petition for Alien Relative using his real identity that would allow him to reside and work legally in the United States. After the petition was approved, the subject voluntarily submitted another employment eligibility verification form to his employer using his real identity and requested his employer change his payroll record to reflect his true name. The subject told his employer that he had been in the United States unlawfully until recently receiving authorization from the U.S. government to reside and work in the

United States. The subject pleaded guilty to making a false claim of citizenship and was sentenced to 4 months in prison with credit for time served. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. We asked an AUSA to provide an explanation of the subject's link to terrorism, but the AUSA did not provide any additional explanation.

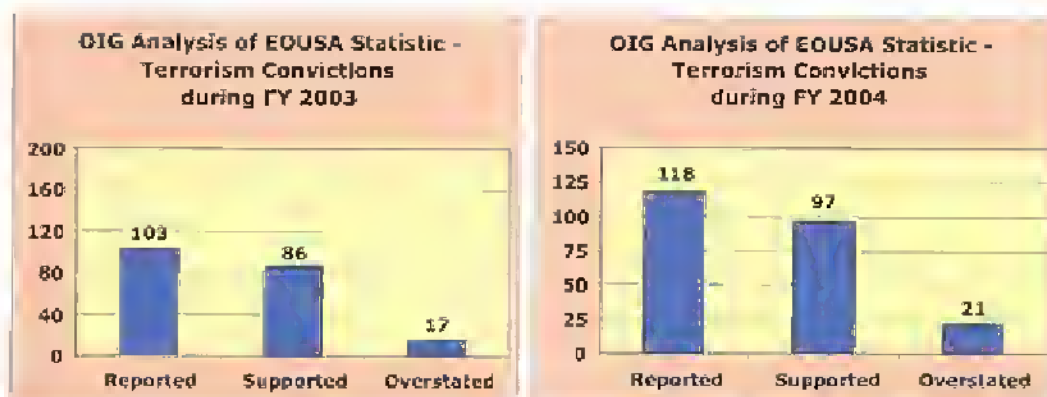
We found that the statistics for terrorism convictions were inaccurately reported primarily because the USAOs categorized the cases against the defendants under the anti-terrorism program activity when the case was filed but did not change the categorization based upon further investigation or based on the actual offenses for which the defendants were convicted. This situation also applies to the following discussions of inaccurately reported statistics on: (1) terrorism-related convictions, (2) sentenced to prison, and (3) defendants for whom terrorism and anti-terrorism cases were terminated.

We also found that 6 of the 30 sampled convictions, including 2 of the 13 convictions that were not linked to terrorism, did not occur in the year reported and should not have been included in the FY 2003 statistic. This same issue occurred for 3 of the 40 sampled convictions in FY 2004, including 1 of the 19 defendants not linked to terrorism, as either the convictions did not occur in the year reported or the USAOs could not provide documentation to show the convictions occurred in the year reported.

Overall, considering both the defendants not linked to terrorism and the defendants not convicted in the year reported, EOUSA overstated the number of terrorism convictions for FY 2003 and FY 2004 as shown in the following charts.<sup>45</sup>

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<sup>45</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.



Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

### 3. Terrorism-Related Convictions

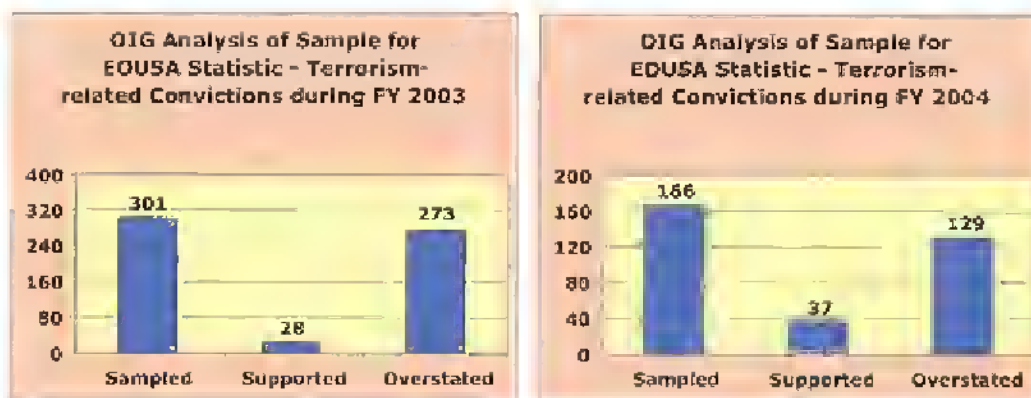
In the FY 2005 and FY 2006 President's Budget Requests to Congress, EOUSA reported 558 terrorism-related convictions for FY 2003 and 379 terrorism-related convictions for FY 2004.<sup>46</sup> We reviewed LIONS reports supporting the number of terrorism-related convictions for FYs 2003 and 2004 and found that the LIONS data agreed with the numbers reported in the budget requests for both years.

We then selected a judgmental sample of the terrorism-related convictions reported for FY 2003 and FY 2004 and performed additional testing to verify the reported numbers. We selected 301 of the 558 terrorism-related convictions reported for FY 2003, and 166 of the 379 terrorism-related convictions reported for FY 2004. We then requested that USAO officials provide information from the case files to show the subject was linked to terrorist activity. If the case file information provided did not show a terrorism link, we asked USAO officials to provide additional information of a terrorism link. The overstatements in the following charts reflect defendants for which the USAOs did not provide information of the terrorism link.<sup>47</sup>

<sup>46</sup> EOUSA reports terrorism-related convictions separately from terrorism convictions. EOUSA defines a terrorism conviction as domestic and international incidents that involve acts, including threats or conspiracies to engage in such acts, which are violent or otherwise dangerous to human life and which appear to be motivated by an intent to coerce, intimidate, or retaliate against a government or a civilian population. EOUSA defines a terrorism-related conviction as incidents involving terrorism-related hoaxes, terrorist financing, and a matter or case where the underlying purpose or object of the investigation is anti-terrorism related.

<sup>47</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.





Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

Below are specific details for examples of unsupported cases.

- During a one-year period, the subject fraudulently opened various credit card accounts under another person's name. The subject used the fraudulently obtained credit cards to make purchases and obtain cash totaling more than \$15,600. The subject pleaded guilty to fraudulent use of access devices (credit cards) and was sentenced to 8 months in prison. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA only commented that this was a case of identity theft and referred us to an affidavit by a United States Secret Service agent for the facts of the case. We reviewed the affidavit and found that it contained no indication that the subject was linked to terrorist activity.
- The subject was charged with possessing a pistol while being an alien illegally and unlawfully in the United States. The subject was found guilty of being an alien unlawfully in the United States in possession of a firearm and was sentenced to time served. The case file information provided by the USAO indicated that the subject was arrested as part of an absconder apprehension initiative for being an alien who was ordered deported from the United States but failed to leave. The case file information contained no indication that the subject was linked to terrorist activity. When we asked an AUSA to provide additional information of a terrorism link, the AUSA provided no additional information.
- The subject and others were part of a scheme to defraud federally insured financial institutions by operating a check kiting scheme. The subject and others would initially deposit into their own bank

accounts checks drawn upon closed accounts at other banks. They would write checks to themselves or to the other participants and then cash the checks. These checks would be cashed before the initially deposited checks were returned because of "insufficient funds." As part of the scheme, the subject received payment from the other participants for cashing their bad checks. The subject pleaded guilty to bank fraud and was sentenced to 3 months with credit for time served. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that the subject was part of an investigation of credit card "bust-out" schemes and financial support to terrorists, but the AUSA provided no information to support that this subject was linked to financial support to terrorists.

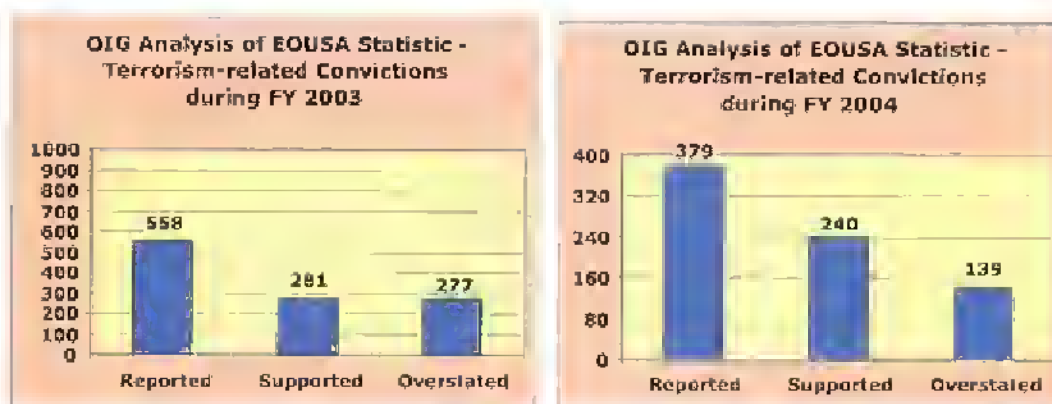
- The subject was charged with making false statements by asserting on an application for an airport identification badge that he had not been convicted of a felony when he knew that he had been so convicted. The subject was convicted at trial of making false statements and sentenced to 1 year on probation. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA repeated the charge above and said that the subject was arrested as part of the USAO's infrastructure/transportation protection initiative. The AUSA provided no additional information to support a terrorism link.
- The subject, a Mexican national who had previously been convicted of attempted theft and deported from the United States, was found to be unlawfully in the United States. The subject pleaded guilty to unlawfully reentering the United States after being deported and was sentenced to 27 months in prison. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA did not provide such a link and reiterated that the subject had illegally reentered the United States after being deported.

We also found that 33 of the 301 sampled convictions, including 29 of the 273 convictions that were not linked to terrorism, did not occur in the year reported and should not have been included in the FY 2003 statistic. This same issue occurred for 30 of the 166 sampled convictions in



FY 2004, including 20 of the 129 convictions that were not linked to terrorism, as either the convictions did not occur in the year reported or the USAOs could not provide documentation to show the convictions occurred in the year reported.

Overall, considering both the defendants not linked to terrorism and the defendants not convicted in the year reported, EOUSA overstated the number of terrorism-related convictions for FY 2003 and FY 2004 as shown in the following charts.<sup>48</sup>



Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

#### 4. Defendants Sentenced to Prison

In the FY 2005 and FY 2006 President's Budget Requests to Congress, EOUSA reported the following numbers of defendants sentenced to prison under its anti-terrorism program activity.

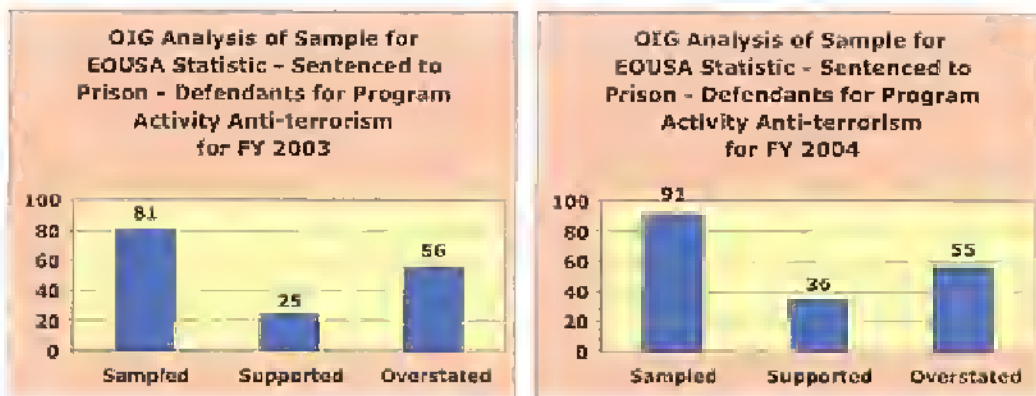
- 264 for FY 2003
- 256 for FY 2004

We reviewed LIONS reports supporting the number of defendants in cases filed by the USAOs under the anti-terrorism program activity for FYs 2003 and 2004 and found that the LIONS data agreed with the numbers reported in the budget requests for both years.

We then selected a judgmental sample of the defendants sentenced to prison under the anti-terrorism program activity for FY 2003 and FY 2004

<sup>48</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.

and performed additional testing to determine the accuracy of the reported numbers. We selected 81 of the 264 defendants sentenced to prison in FY 2003, and 91 of the 256 defendants sentenced to prison in FY 2004. We then requested that USAO officials provide information from the case files to show the subject was linked to terrorist activity. If the case file information provided did not show a terrorism link, we asked USAO officials to provide additional information of a terrorism link. The overstatements in the following charts reflect defendants for which the USAOs did not provide information of the terrorism link.<sup>49</sup>



Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

Below are specific details for examples of unsupported cases.

- The subject submitted false employment information to credit card companies when applying for multiple credit cards. As part of a scheme to defraud the credit card companies, the subject provided the fraudulently obtained credit cards to a co-conspirator who began making purchases with the cards to develop a credit history and establish higher credit limits. The subject would pay the credit card companies for the credit card charges to further develop the credit history for the cards. After the credit limits on the cards were maximized, the co-conspirators would take the cards to collusive merchants who, in exchange for a portion of the fraud proceeds, charged the cards through their merchant credit card terminals to make it appear that goods or services were being purchased when no such purchases were made. The merchants would run up the fraudulent charges until the credit card limits were exhausted. Neither the subject nor the co-conspirators would reimburse the credit card companies for the charges. The credit

<sup>49</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.

card companies would subsequently pay the merchants, unaware that they were paying for bogus charges. The subject pleaded guilty to conspiracy to commit credit card fraud and was sentenced to 60 days in prison. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that the subject was part of an investigation of credit card "bust-out" schemes and financial support to terrorists, but the AUSA provided no information to support that this subject was linked to financial support to terrorists.

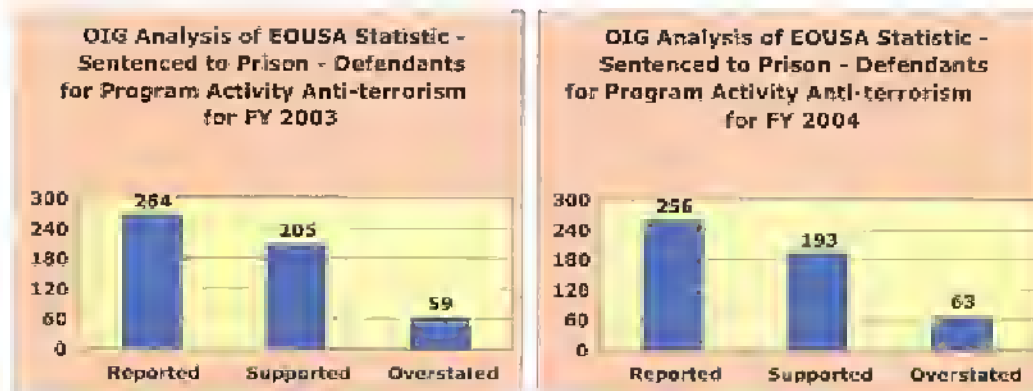
- The subject was charged with falsely representing a social security number to be his own for the purpose of gaining employment and a security badge at an airport. The subject pleaded guilty to misuse of a social security number and was sentenced to 10 months in prison. The case file information indicated that the subject was arrested as part of an operation similar to Operation Tarmac where Department and other federal agents went into the local airport and arrested individuals who used falsified documents such as social security numbers, drivers' licenses, and other identification documents to gain employment at airport facilities. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA provided no additional information that linked the subject to terrorist activity.
- The subject was charged with: (1) making a false statement by asserting on an application for a social security card that neither he nor anyone acting on his behalf had ever filed for or received a social security number before when he had previously received a social security number; and (2) two counts of using a social security number to obtain payments or benefits to which he was not entitled. The subject pleaded guilty to one count of using a social security number with intent to deceive and was sentenced to 3 years probation. The other two charges against the subject were dismissed. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that the subject was arrested as part of Operation Plane View, which was an operation similar to Operation Tarmac where Department and other federal agents went into the local airport and arrested individuals who used falsified documents such as social security numbers, drivers' licenses, and other identification documents to gain employment at

airport facilities. The AUSA provided no additional information that linked the subject to terrorist activity.

- The subject submitted a fraudulent application for a driver's license. The subject pleaded guilty to identification fraud and was sentenced to 3 months in prison. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that the subject was arrested as part of Project Facilitator, an operation to identify, arrest, and convict individuals involved in identification fraud. The AUSA provided no additional information to support the subject's link to terrorist activity.

We also found that 9 of the 81 defendants for FY 2003, including 6 of the 56 defendants not linked to terrorism, were either not sentenced in the year reported or the USAOs could not provide documentation to show the defendants were sentenced in the year reported. This same issue occurred for 19 of the 91 defendants for FY 2004, including 11 of the 55 that were not linked to terrorism, as either the defendants were not sentenced in the year reported or the USAOs could not provide documentation to show the defendants were sentenced in the year reported.

Overall, considering both the defendants not linked to terrorism and the defendants not sentenced to prison in the year reported, EOUSA overstated the number of defendants sentenced to prison under program activity anti-terrorism for FY 2003 and FY 2004 as shown in the following charts.<sup>50</sup>

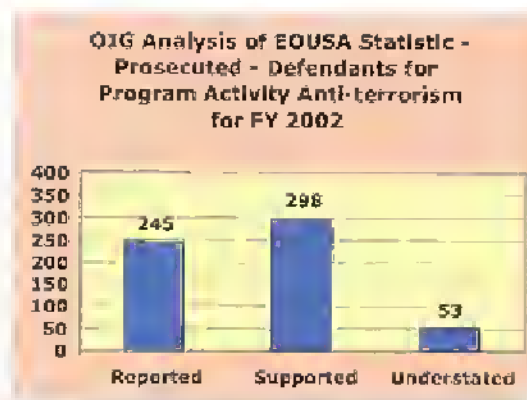


Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

<sup>50</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.

## 5. Defendants Prosecuted

In the FY 2004 President's Budget Request to Congress, EOUSA reported that 245 defendants were prosecuted in FY 2002 under its anti-terrorism program activity. However, the LIONS data did not match the number reported in the annual budget request as shown in the following chart.



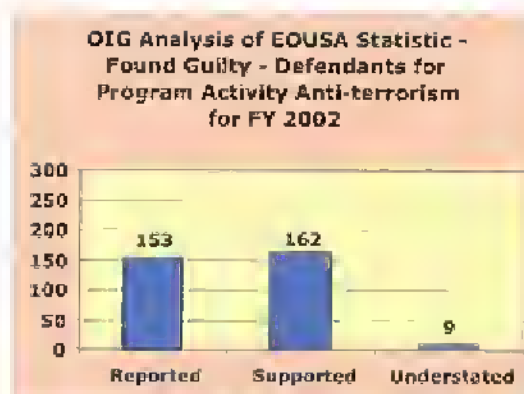
Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

See Statistic 1 in the EOUSA Terrorism Statistics section for a discussion of why we did no further testing of this statistic and why the statistic was inaccurately reported.

## 6. Defendants Found Guilty

In the FY 2004 President's Budget Request to Congress, EOUSA reported that 153 defendants were found guilty under its anti-terrorism program activity during FY 2002. However, the LIONS data did not match the number reported in the annual budget request as shown in the following chart.



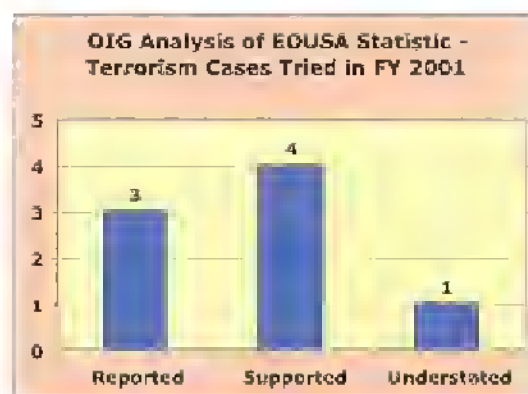


Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

See Statistic 1 in the EOUSA Terrorism Statistics section for a discussion of why we did no further testing of this statistic and why the statistic was inaccurately reported.

## 7. Terrorism Cases Tried

In the FY 2003 President's Budget Request to Congress, EOUSA reported that three terrorism cases were tried in FY 2001. However, the LIONS data did not match the number reported in the annual budget request as shown in the following chart.



Source: EOUSA and USAO budgets and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

See Statistic 1 in the EOUSA Terrorism Statistics section for a discussion of why we did no further testing of this statistic. An EOUSA official indicated that one case was not reported due to an oversight.

## **8. Terminated Terrorism and Anti-Terrorism Cases**

In the USAOs FY 2003 and FY 2004 Annual Statistical Reports, EOUSA reported the following number of terrorism and anti-terrorism cases that had been terminated against defendants.<sup>51</sup>

- 682 during FY 2003
- 504 during FY 2004

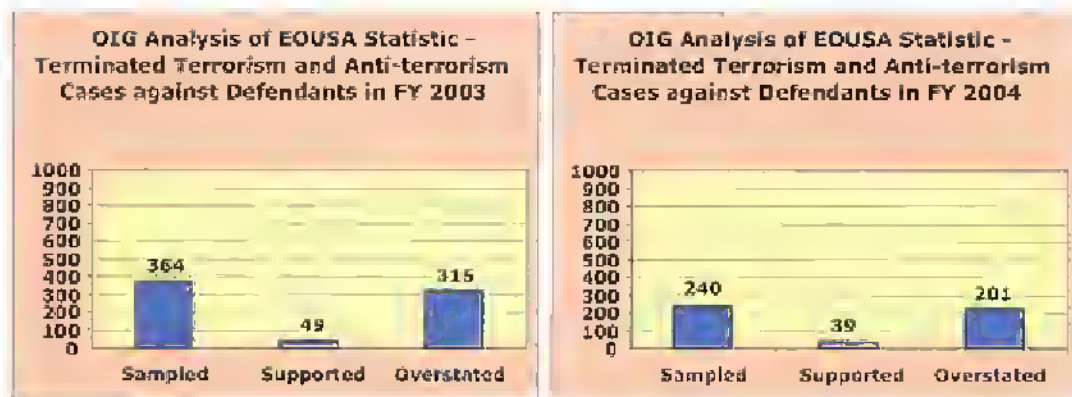
We reviewed LIONS reports supporting the number of terrorism and anti-terrorism cases that had been terminated against defendants for FYs 2003 and 2004 and found that the LIONS data agreed with the numbers reported in the annual statistical reports for both years.

We then selected a judgmental sample of the number of terrorism and anti-terrorism cases terminated against defendants for FY 2003 and FY 2004 and performed additional testing to determine the accuracy of the reported numbers. We selected 364 of the 682 terrorism and anti-terrorism cases terminated against defendants in FY 2003 and 240 of the 504 terrorism and anti-terrorism cases terminated against defendants in FY 2004. We then requested that USAO officials provide information from the case files to show the subject was linked to terrorist activity. If the case file information provided did not show a terrorism link, we asked USAO officials to provide additional information of a terrorism link. The overstatements in the following charts reflect cases for which the USAOs did not provide information of the terrorism link.<sup>52</sup>

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<sup>51</sup> The USAOs Annual Statistical Reports contain: (1) narrative information describing the USAO's programs and initiatives, (2) summaries of some of the most interesting and important cases that were handled by the USAOs during the year, and (3) statistical tables displaying both national and district caseload data. The USAOs consider a case terminated primarily when the case is transferred to another USAO district, the case is dismissed, or a judgment is issued in the case.

<sup>52</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.



Source: USAO annual statistical reports and LIONS data, OIG's interviews of EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

The following are specific details for examples of unsupported cases.

- The subject was charged with making false statements by asserting on an application for an airport identification badge that, during the 10 years preceding the date of application, the subject had not been convicted of any disqualifying crimes listed on the application when the subject knew otherwise. The subject had been convicted and sentenced in January 1998 for the crime of carrying a concealed weapon in a vehicle. The subject pleaded guilty to the charges of making a false statement and was sentenced to time served and placed on supervised release for 1 year. The information provided by EOUSA contained no indication that the subject was linked to terrorist activity. We asked EOUSA to provide an explanation and evidence of the subject's link to terrorism, but EOUSA did not provide any additional evidence.
- The subject was charged with knowingly and willfully using and providing others a false, forged, counterfeit, mutilated and altered passport. The subject pleaded guilty to forgery and false use of a passport and was sentenced to 10 months in prison with 3 years supervised release. The information provided by EOUSA contained no indication that the subject was linked to terrorist activity. We asked EOUSA to provide an explanation and evidence of the subject's link to terrorism, but EOUSA did not provide any additional evidence.
- The subject was charged with: (1) possession of resident alien cards that were forged, counterfeited, altered, and falsely made under the pretense of using the resident alien cards to stay and obtain employment in the United States; (2) forging, counterfeiting,

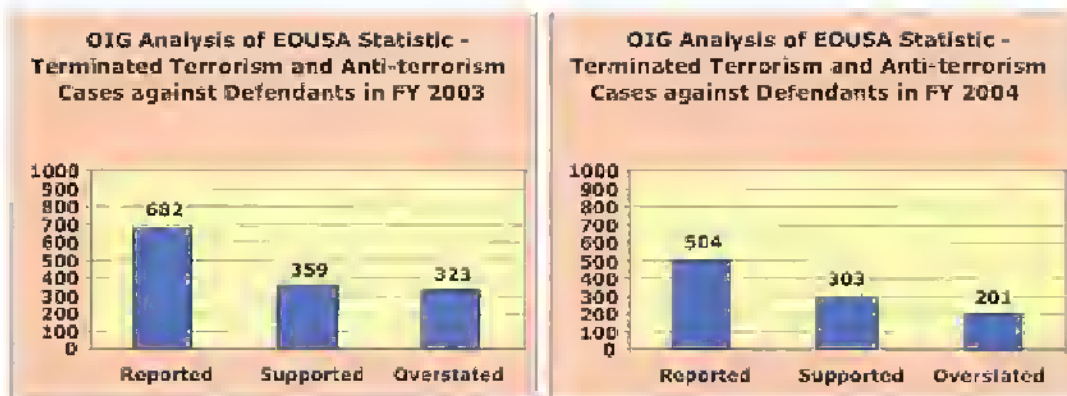


altering, and falsely making resident alien cards for use in residing and obtaining employment in the United States; (3) possession of document making equipment with the intent of making false U.S. identification documents, Social Security Administration cards, and resident alien cards; and (4) possession with the intent to use five or more U.S. identification cards, approximately 1,236 blank Social Security Administration cards, and 1,698 blank resident alien cards. The subject pleaded guilty to making and possessing with the intent to use false U.S. identification documents and was sentenced to 2 years in prison and 3 years supervised release. The information provided by EOUSA contained no indication that the subject was linked to terrorist activity. We asked EOUSA to provide an explanation and evidence of the subject's link to terrorism, but EOUSA did not provide any additional evidence.

- During a one-year period, the subject knowingly and with intent to defraud used several unauthorized credit cards to make purchases totaling \$1,000 or more using falsely obtained driver's licenses. The subject pleaded guilty to conspiracy to commit access device fraud and was sentenced to 37 months in prison and 3 years supervised release. The information provided by EOUSA contained no indication the subject was linked to terrorist activity. We asked EOUSA to provide an explanation and evidence of the subject's link to terrorism, but EOUSA did not provide any additional evidence.

We also found that 42 of the 364 cases sampled for FY 2003, including 34 of the 315 that were not linked to terrorism, were either not terminated at the end of the year reported or the USAOs could not provide documentation to show the cases were terminated at the end of the year reported. This same issue occurred for 13 of the 240 cases sampled for FY 2004, all of which were included in the 201 cases that were not linked to terrorism.

Overall, considering both the cases not linked to terrorism and the cases not terminated in the year reported, EOUSA overstated the terrorism and anti-terrorism cases terminated against defendants in FY 2003 and FY 2004 as shown in the following charts.



Source: USAO annual statistical reports and LIONS data, OIG's interviews of EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

## 9. Pending Terrorism and Anti-Terrorism Cases

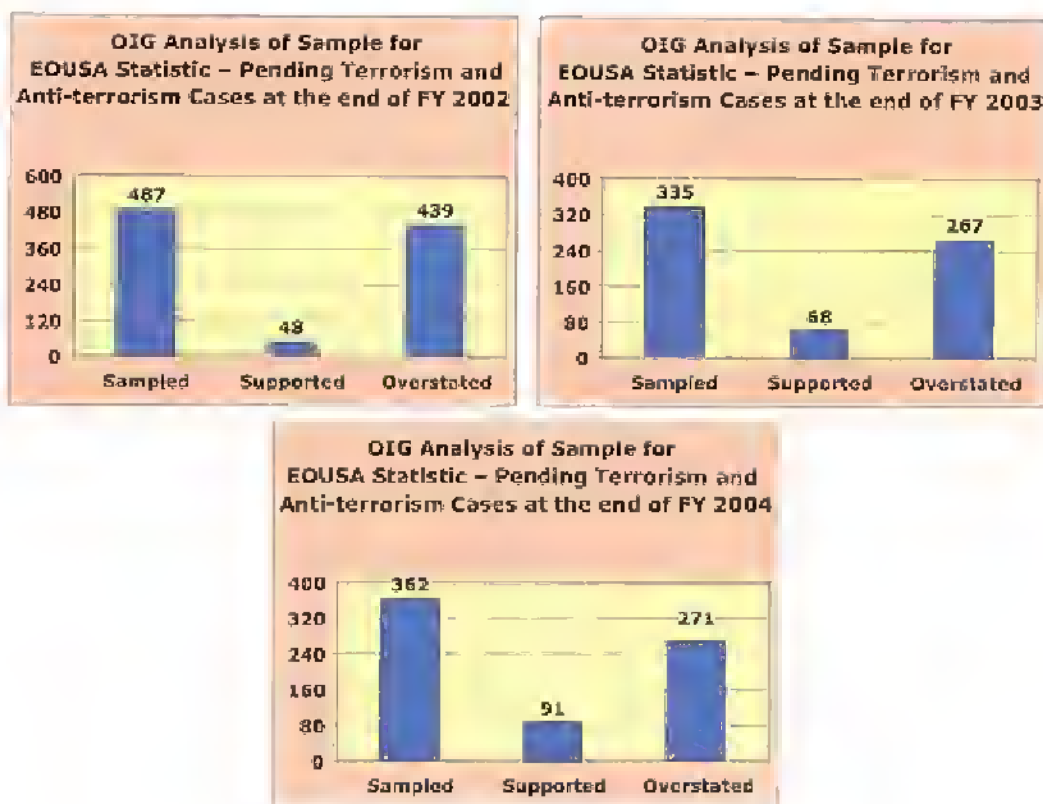
In the USAOs FY 2003 and FY 2004 Annual Statistical Reports, EOUSA reported the following number of pending terrorism and anti-terrorism cases at the end of each year.

- 737 for FY 2002
- 637 for FY 2003
- 719 for FY 2004

We reviewed LIONS reports supporting the number of pending terrorism and anti-terrorism cases for FYs 2002, 2003, and 2004 and found the LIONS data agreed with the numbers reported in the annual statistical reports for all 3 years.

We selected a judgmental sample of the pending terrorism and anti-terrorism cases for FYs 2002, 2003, and 2004 and performed additional testing to determine the accuracy of the reported numbers. We selected 487 of the 737 pending terrorism and anti-terrorism cases for FY 2002, 335 of the 637 pending terrorism and anti-terrorism cases for FY 2003, and 362 of the 719 pending terrorism and anti-terrorism cases for FY 2004. We then requested that USAO officials provide information from the case files to show the subject was linked to terrorist activity. If the case file information provided did not show a terrorism link, we asked USAO officials to provide additional information of a terrorism link. The overstatements in the

following charts reflect defendants for which the USAOs did not provide information of the terrorism link.<sup>53</sup>



Source: USAO annual statistical reports and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

The following are specific details for examples of unsupported cases.

- The subject was charged with: (1) falsely representing a social security account number to be his own for the purpose of gaining employment and a security badge at an airport, (2) using fraudulent social security and immigration cards for the same purpose, and (3) unlawfully entering an airport area. The subject was convicted of unlawful entry into an airport area and was sentenced to time served. The other two charges against the subject were dismissed. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA told us that the

<sup>53</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.

subject was arrested as part of an operation similar to Operation Tarmac where Department and other federal agents went into the local airport and arrested individuals who used falsified documents such as social security numbers, drivers' licenses, and other identification documents to gain employment at airport facilities. The AUSA provided no additional information that linked the subject to terrorist activity.

- The subject was charged with possessing a handgun while being an alien unlawfully in the United States. The subject was found guilty of being an illegal alien in possession of a firearm and was sentenced to 18 months in prison. However, the case was appealed and the charge was subsequently dismissed. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. When we asked an AUSA to provide additional information of a terrorism link, the AUSA provided no additional information.
- The subject was charged with making false statements by asserting on an application for an airport identification badge that, during the 10 years preceding the date of application, the subject had not been convicted of any disqualifying crimes listed on the application when the subject knew otherwise. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. When we asked an AUSA to provide additional information of a terrorism link, the AUSA said the subject was arrested as part of Operation Fly Trap, an operation similar to Operation Tarmac where Department and other federal agents went into the local airport and arrested individuals who used falsified documents such as social security numbers, drivers' licenses, and other identification documents to gain employment at airport facilities. The AUSA provided no additional information or explanation that linked the subject to terrorist activity. The case against the subject was subsequently dismissed.
- The subject was the president of a travel company that was asserted to be a collusive merchant involved in a scheme to defraud credit card companies. Two credit cards in the name of another individual were charged at the travel company 10 times during a 4-week period for a total of \$12,500. The credit card issuer eventually closed the accounts for nonpayment and wrote off the balances. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to

support a terrorism link, the AUSA told us that the subject was part of an investigation of credit card "bust-out" schemes and financial support to terrorists, but the AUSA provided no information to support that this subject was linked to financial support to terrorists. The case against the subject was subsequently dismissed.

- The subject knowingly entered into a marriage for the purpose of evading the immigration laws of the United States. The subject pleaded guilty to marriage fraud and was sentenced to 3 years probation with the first 6 months to be served under home confinement. The case file information provided by the USAO contained no indication the subject was linked to terrorist activity. When we asked an AUSA to provide additional information to support a terrorism link, the AUSA did not provide any additional information.

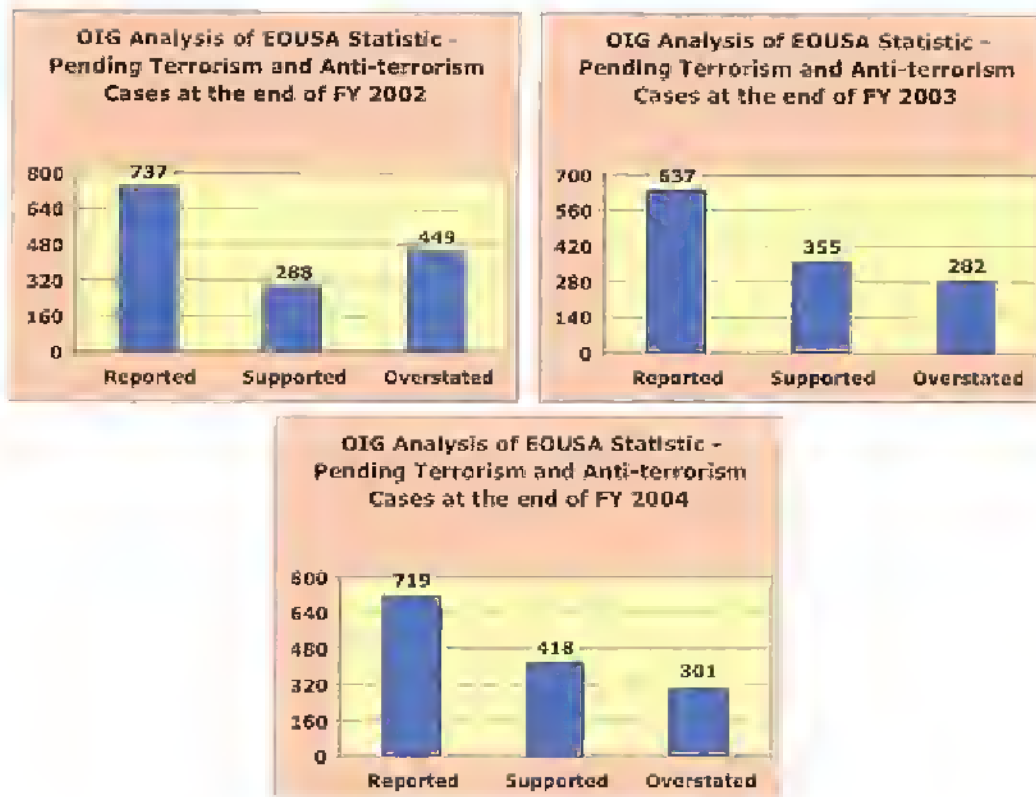
We also found that 127 of the 487 cases sampled for FY 2002, including 117 of the 439 that were not linked to terrorism, were either not pending at the end of the year reported or the USAOs could not provide documentation to show the cases were pending at the end of the year reported. This same issue occurred for:

- 122 of the 335 cases sampled for FY 2003, including 107 of the 267 that were not linked to terrorism; and
- 191 of the 362 cases sampled for FY 2004, including 161 of the 271 that were not linked to terrorism.

Overall, considering both the defendants not linked to terrorism and the defendants not convicted in the year reported, EOUSA overstated the number of terrorism-related convictions for FY 2003 and FY 2004 as shown in the following charts.<sup>54</sup>

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<sup>54</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.



Source: USAO annual statistical reports and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

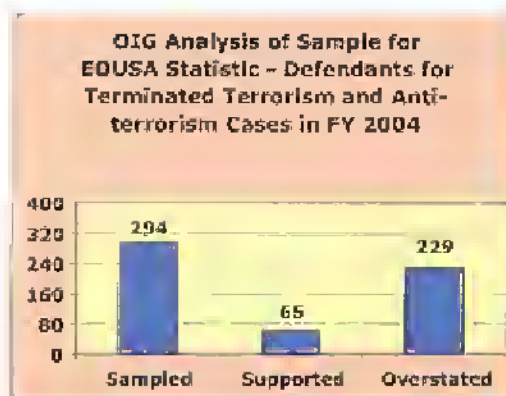
## 10. Defendants for Terminated Terrorism and Anti-Terrorism Cases

In the USAOs FY 2004 Annual Statistical Report, EOUSA reported that the USAOs terminated terrorism and anti-terrorism cases against 643 defendants in FY 2004.<sup>55</sup> We reviewed LIONS reports supporting the number of defendants for which terrorism and anti-terrorism cases were terminated during FY 2004. The LIONS data agreed with the number reported in the Annual Statistical Report for FY 2004.

We then selected a judgmental sample of 294 of the 643 defendants for which terrorism and anti-terrorism cases were terminated during FY 2004 and performed additional testing to determine the accuracy of the reported number. We then requested that USAO officials provide information from the case files to show the subject was linked to terrorist activity. If the case

<sup>55</sup> EOUSA reported cases as terminated primarily when: (1) the case was dismissed, (2) a judgment in the case was issued, or (3) the case was transferred to another USAO district.

file information provided did not show a terrorism link, we asked USAO officials to provide additional information of a terrorism link. The overstatements in the following charts reflect defendants for which the USAOs did not provide information of the terrorism link.<sup>56</sup>



Source: USAO annual statistical report and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

The following are specific details for examples of unsupported cases.

- The subject was charged with falsely representing a social security number to be his own for the purpose of obtaining employment with a company and receiving an access badge to a stadium for a Super Bowl game. The subject pleaded guilty to fraudulent use of a social security number and was sentenced to time served. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. When we asked an AUSA to provide an explanation and evidence of the subject's link to terrorism, the AUSA did not provide any additional explanation or evidence.
- The subject was charged with: (1) fraudulently stating his name on an application for a Department of Motor Vehicles identification card, (2) fraudulently providing a false address and false social security number on the same application, and (3) falsely representing a social security number to be his when he knew it was not. The subject pleaded guilty to the charge of misusing a social security number and was sentenced to 3 years probation. The other two charges against the subject were dismissed. The

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<sup>56</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.



case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. When we asked an AUSA to provide additional evidence to support a terrorism link, the AUSA repeated the charges above and provided no additional information of a terrorism link.

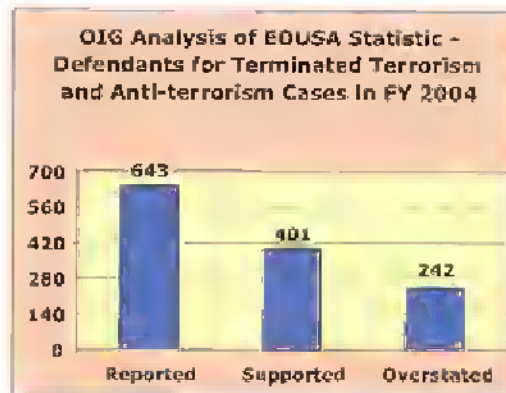
- The subject was charged with falsely representing a social security number to be his own for the purpose of obtaining employment and a security badge allowing him access to a secure area of an airport. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. When we asked an AUSA to provide an explanation of the subject's link to terrorism, the AUSA told us the subject was arrested as part of an operation similar to Operation Tarmac. The AUSA provided no additional explanation of a terrorism link. The charge against the subject was subsequently dismissed.
- The subject was charged with: (1) conspiring with others to produce identification documents affecting interstate commerce, and (2) three counts of causing representatives of a Department of Motor Vehicles to produce false identification documents by using a false address on his application for the documents. The subject pleaded guilty to one count of identification fraud and the other three charges were dismissed. The subject was sentenced to time served. The case file information provided by the USAO contained no indication that the subject was linked to terrorist activity. When we asked an AUSA to provide an explanation of the subject's link to terrorism, the AUSA told us that that the subject was arrested as part of Project Facilitator, an operation to identify, arrest, and convict individuals involved in identification fraud. The AUSA provided no additional information to support the subject's link to terrorist activity.

We also found that 33 of the 294 cases, including 20 of the 229 that were not linked to terrorism, either were not terminated during the year reported or the USAOs could not provide documentation to show the cases were terminated during the year reported.

Overall, considering both the defendants in cases that were not linked to terrorism and the defendants in cases that were not terminated during the year reported, EOUSA overstated the number of defendants for which



terrorism and anti-terrorism cases were terminated in FY 2004 as shown in the following chart.<sup>57</sup>



Source: USAO annual statistical report and LIONS data, OIG interviews with EOUSA and USAO staff, and analysis of documents provided by EOUSA and USAO staff

#### **11. Percent of Defendants Whose Terrorism and Anti-Terrorism Cases Were Terminated and Who Were Convicted**

In the USAO FY 2003 Annual Statistical Report, EOUSA reported that 87 percent of the defendants whose terrorism and anti-terrorism cases were terminated in FY 2003 were convicted. EOUSA based this statistic on the number of defendants associated with the 682 terminated cases in FY 2003 (Statistic Number 8). As noted in our analysis of EOUSA Statistic Number 8 on pages 59 through 62, we could only identify EOUSA's documentation support for 359 terrorism and anti-terrorism cases terminated in FY 2003. We analyzed the 359 cases and found that 388 defendants were associated with the cases, of which 333 had been convicted. Therefore, we calculated that 86 percent of the defendants whose terrorism and anti-terrorism cases were terminated in FY 2003 were convicted. Therefore, EOUSA overstated the percent of the defendants whose terrorism and anti-terrorism cases were terminated in FY 2003 who were convicted by 1 percent in the FY 2003 Annual Statistical Report.

#### **CRIMINAL DIVISION TERRORISM STATISTICS**

We tested the following five operational statistics that the Criminal Division reported in the FY 2006, FY 2005, or FY 2004 President's Budget Request to Congress.

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<sup>57</sup> As noted in footnote 41 on page 43, the numbers supported for these statistics are based on a sample of transactions reported.

- Number of individuals charged as a result of terrorism investigations from September 11, 2001, through February 3, 2005;
- Number of individuals who have been convicted or pleaded guilty as a result of terrorism investigations from September 11, 2001, through February 3, 2005;
- Number of individuals charged with material support of terrorism or similar crimes from September 11, 2001, through August 5, 2004, and from September 11, 2001, through February 3, 2005;<sup>58</sup>
- Number of individuals convicted of material support of terrorism or similar crimes from September 11, 2001, through February 3, 2005; and
- Number of material support investigations the Criminal Division participated in or coordinated: (1) as of January 31, 2003, (2) as of January 31, 2004, (3) from October 1, 2002, through September 30, 2003, and (4) from October 1, 2003, through September 30, 2004.

The Criminal Division's Counterterrorism Section (CTS) oversees the investigation and prosecution of terrorism-related offenses. The CTS uses two methods for accumulating data for the five Criminal Division statistics we tested. For the first four statistics tested, the CTS maintains a local database application for tracking and reporting. For the last statistic tested, a CTS official performs a quarterly manual count of data she receives from CTS attorneys and the Deputy for Terrorist Financing regarding the material support to terrorism cases or matters the Criminal Division was working on.<sup>59</sup>

We initially requested information from the database to support the first four operational statistics we tested. The Deputy Chief of CTS responded that the database was not up-to-date and that she could not reconcile the numbers reported for the four operational statistics to the

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<sup>58</sup> This statistic was reported twice – once as a cumulative number from September 11, 2001, through August 5, 2004; and second as a cumulative number from September 11, 2001, through February 3, 2005. Because the numbers reported were cumulative, the later statistic includes the number reported for the first statistic.

<sup>59</sup> The Criminal Division investigations into terrorism-related offenses are referred to as "matters" if no charges have been filed. Once charges have been filed, the investigation is referred to as a "case."

database. We also requested support for the Deputy Chief's manual count for the last operational statistic we tested. The Deputy Chief provided us with a list of terrorist financing cases that were prosecuted under various U.S. Code sections. As we began to review the list, the Deputy Chief told us that the list could not be used to provide support for the material support to terrorism statistics reported because the cases identified in the list included only cases where individuals had been charged. It did not include material support to terrorism investigations or matters the Criminal Division was currently working on. The Deputy Chief said that cases where no charges were brought were included in the reported statistics but would not be included on the terrorist financing list she provided.

The CTS Chief therefore requested more time to update the database and reconstruct a list of terrorist financing cases, investigations, or matters that the Criminal Division participated in or coordinated that would support statistics reported. In March 2006, the CTS subsequently provided the updated database and a list of terrorist financing cases, investigations, or matters the Criminal Division participated in or coordinated.

For each of the five statistics tested, we reviewed evidence in support of the March 2006 reconstructed data provided for each statistic, as well as the internal controls in place to ensure the statistics were accurately reported. We found that the Criminal Division's reconstructed data did not support the accuracy of the five statistics we tested in eight of the nine times the statistics were reported. Specifically, our analysis of the reconstructed data and supporting documentation showed that the statistics were overstated six times, understated two times, and reported accurately one time.

When we briefed the Criminal Division in August 2006 on our tests of the March 2006 reconstructed data, the Deputy Assistant Attorney General for the Criminal Division stated that while the Criminal Division needed to strengthen its controls to gather, report, and document accurate terrorism statistics, he believed the Criminal Division could provide the documentation needed to support all the statistics reported. In August 2006, the Criminal Division provided us another set of reconstructed lists to support the five statistics we tested.

We compared the August 2006 reconstructed lists to the March 2006 reconstructed data provided by the Criminal Division and identified various anomalies between the two lists such as: (1) data was on the March 2006 reconstructed lists and counted as meeting the criteria for the reported statistic but was not on the August 2006 reconstructed lists, (2) data was on the March 2006 reconstructed lists and not counted because it did not meet

the criteria for the statistic reported but was counted on the August 2006 reconstructed lists, and (3) data was counted on the August 2006 reconstructed lists but was not on the March 2006 reconstructed lists. We then met with Criminal Division officials and reconciled the differences between the two sets of reconstructed data. As shown in the following table, the reconciliation showed that the August 2006 reconstructed lists still were inaccurate for seven of the nine times that the five statistics were reported, although the data presented indicated the statistics had been understated, not overstated as the previous data suggested.

### **OIG Reconciliation of the Criminal Division's August 2006 Reconstructed Lists**

<b>Statistic Reported</b>	<b>August 2006 Reconstructed List</b>	<b>Final Reconciled Reconstructed List</b>	<b>Difference</b>
1. Individuals charged resulting from terrorism investigations from 9-11-01 through 2-3-05	382	383	1
2. Individuals convicted or pleaded guilty resulting from terrorism investigations from 9-11-01 through 2-3-05	216	216	0
3.a. Individuals charged with material support of terrorism or similar crimes from 9-11-01 through 8-5-04	126	144	18
3.b. Individuals charged with material support of terrorism or similar crimes from 9-11-01 through 2-3-05	144	162	18
4. Individuals convicted of material support of terrorism or similar crimes from 9-11-01 through 2-3-05	60	65	5
5.a. Material support to terrorism cases and matters participated in or coordinated as of 1-31-03	51	51	0
5.b. Material support to terrorism cases and matters participated in or coordinated as of 1-31-04	71	74	3
5.c. Material support to terrorism cases and matters participated in or coordinated from 10-1-02 through 9-30-03	100	102	2
5.d. Material support to terrorism cases and matters participated in or coordinated from 10-1-03 through 9-3-04	122	124	2

Source: OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff

The differences between the final reconciled reconstructed lists and the August 2006 reconstructed lists were either: (1) data that was counted on the March 2006 reconstructed lists and not on the August 2006 reconstructed lists that the Criminal Division officials agreed should be added back to the August 2006 reconstructed lists, or (2) data that was not on the

August 2006 or March 2006 reconstructed lists that the Criminal Division officials said should be added to the August 2006 reconstructed lists.

Next, we selected a sample of the transactions included on the final August 2006 reconciled reconstructed lists for each of the nine times the five statistics were reported to test the support documentation. We requested documentation from the Criminal Division to support that the transaction was terrorism-related and that it occurred during the reporting period. The Criminal Division provided documentation to support that all the transactions tested were terrorism-related. However, as shown in the following table, the Criminal Division provided documentation that showed a small number of transactions tested did not occur during the reporting period and therefore should not have been reported.

### **OIG Analysis of a Sample Of Transactions Reported**

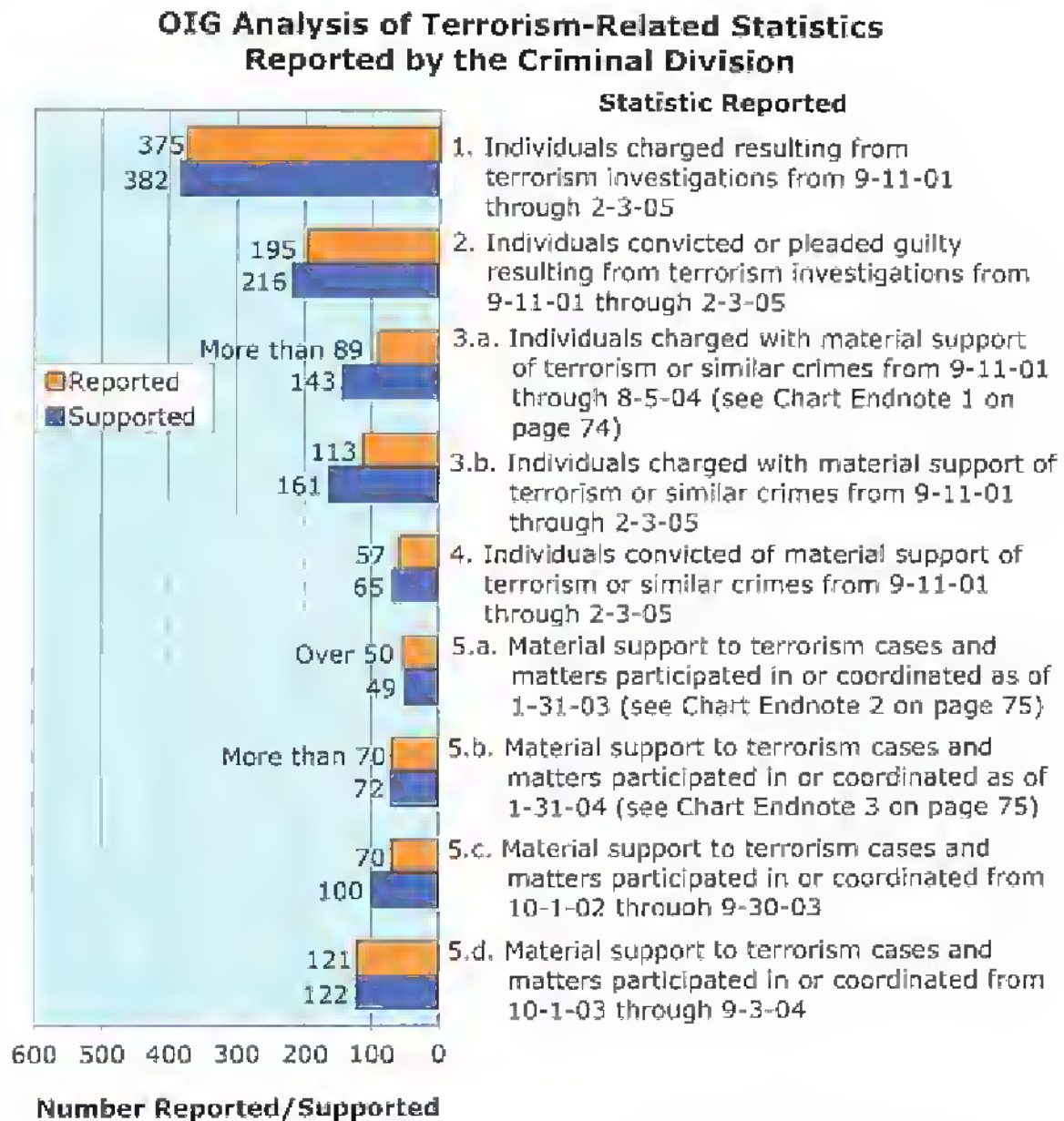
<b>Statistic Reported</b>	<b>Transactions Tested</b>	<b>Outside Time Period</b>
1. Individuals charged resulting from terrorism investigations from 9-11-01 through 2-3-05	26	1
2. Individuals convicted or pleaded guilty resulting from terrorism investigations from 9-11-01 through 2-3-05	15	0
3.a. Individuals charged with material support of terrorism or similar crimes from 9-11-01 through 8-5-04	45	1
3.b. Individuals charged with material support of terrorism or similar crimes from 9-11-01 through 2-3-05	55	1
4. Individuals convicted of material support of terrorism or similar crimes from 9-11-01 through 2-3-05	28	0
5.a. Material support to terrorism cases and matters participated in or coordinated as of 1-31-03	34	2
5.b. Material support to terrorism cases and matters participated in or coordinated as of 1-31-04	46	2
5.c. Material support to terrorism cases and matters participated in or coordinated from 10-1-02 through 9-30-03	71	2
5.d. Material support to terrorism cases and matters participated in or coordinated from 10-1-03 through 9-3-04	76	2

Source: OIG Interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff

We discussed these inaccuracies with Criminal Division officials and they agreed that the unsupported transactions should not have been included.



Considering the results of our testing of the sample transactions reported, the following chart shows that we found that all five statistics were reported inaccurately by the Criminal Division, although the statistics appear to be inaccurately understated.



Source: Criminal Division budgets, OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff

Chart Endnotes

1. For this statistic, the Criminal Division reported the number as "more than 89" instead of an exact number.

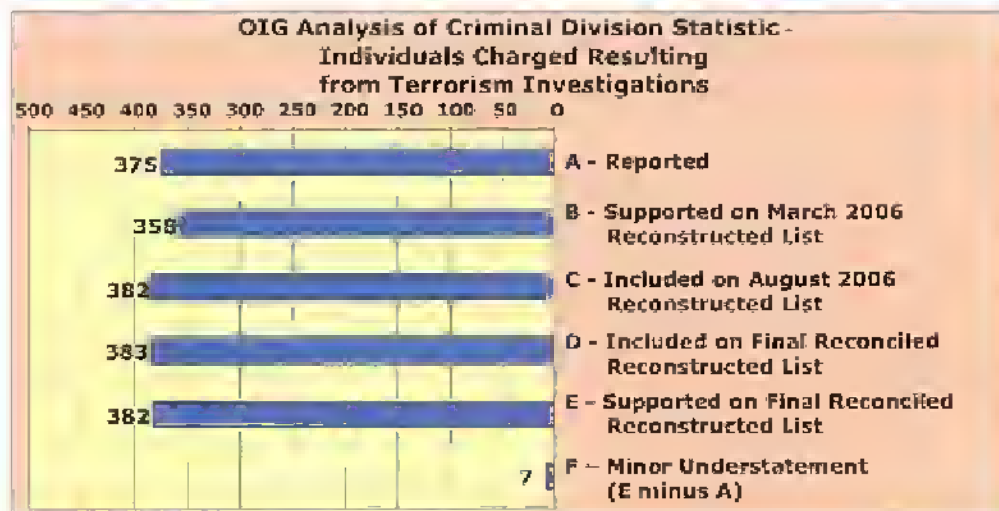
Chart Endnotes - continued

2. For this statistic, the Criminal Division reported the number as "over 50" instead of an exact number.
3. For this statistic, the Criminal Division reported the number as "more than 70" instead of an exact number.

As detailed on the following pages, some of the reported statistics were misreported by significant margins and others by minor amounts. The CTS's Deputy Chief said the statistics were inaccurately reported primarily because the database used to track the statistics was incomplete and not kept up-to-date. We found that CTS had not established formalized procedures to: (1) instruct staff on what data is to be reported in the database, and how and when the data is to be reported; and (2) validate the accuracy of the information reported in the database.

### 1. Individuals Charged Resulting from Terrorism Investigations

The CTS oversees the investigation and prosecution of domestic and international terrorism cases. In the FY 2006 President's Budget Request to Congress, the Criminal Division reported 375 individuals were charged as a result of terrorism investigations from September 11, 2001, through February 3, 2005. As shown in the following chart, we found the Criminal Division's final reconciled reconstructed list of individuals charged did not match the number reported.

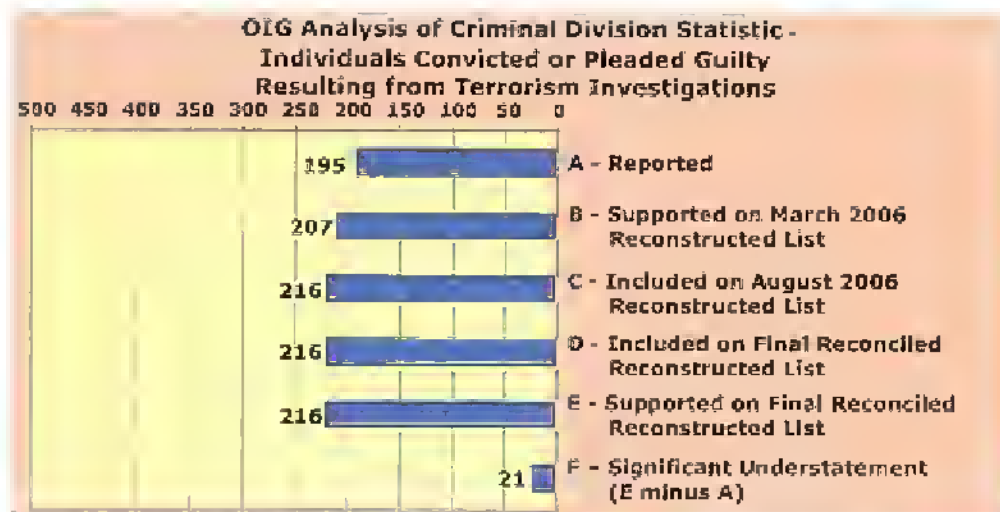


Source: Criminal Division budgets, OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff

As a result, the Criminal Division understated by a minor amount the number of individuals charged as a result of terrorism investigations from September 11, 2001, through February 3, 2005.

## 2. Individuals Convicted or Pleaded Guilty Resulting from Terrorism Investigations

In the FY 2006 President's Budget Request to Congress, the Criminal Division reported 195 individuals were convicted or pleaded guilty as a result of terrorism investigations from September 11, 2001, through February 3, 2005. As shown in the following chart, we found the Criminal Division's final reconciled reconstructed list of individuals convicted or pleading guilty did not match the number reported.



Source: Criminal Division budgets, OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff

As a result, the Criminal Division understated by a significant amount the number of individuals who were convicted or pleaded guilty as a result of terrorism investigations from September 11, 2001, through February 3, 2005.

## 3. Individuals Charged with Material Support of Terrorism or Similar Crimes

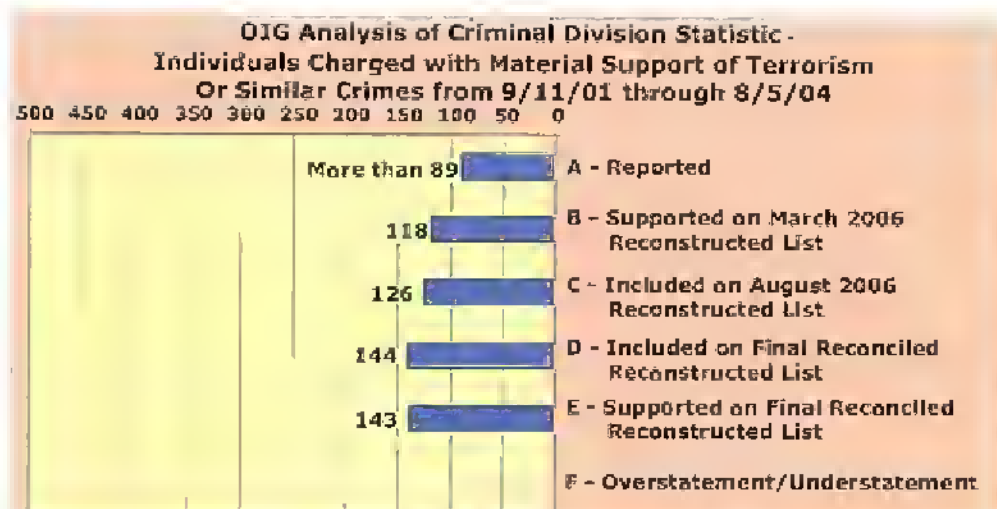
The CTS also oversees the investigation and prosecution of terrorist financing matters. This includes material support cases such as those that involve funds being provided to support terrorist activities. The CTS collects statistics related to these cases for inclusion in its annual budgets. In the FY 2006 President's Budget Request to Congress, the Criminal Division reported that:

- more than 89 people were charged in material support prosecutions and terrorist financing investigations from September 11, 2001, through August 5, 2004; and

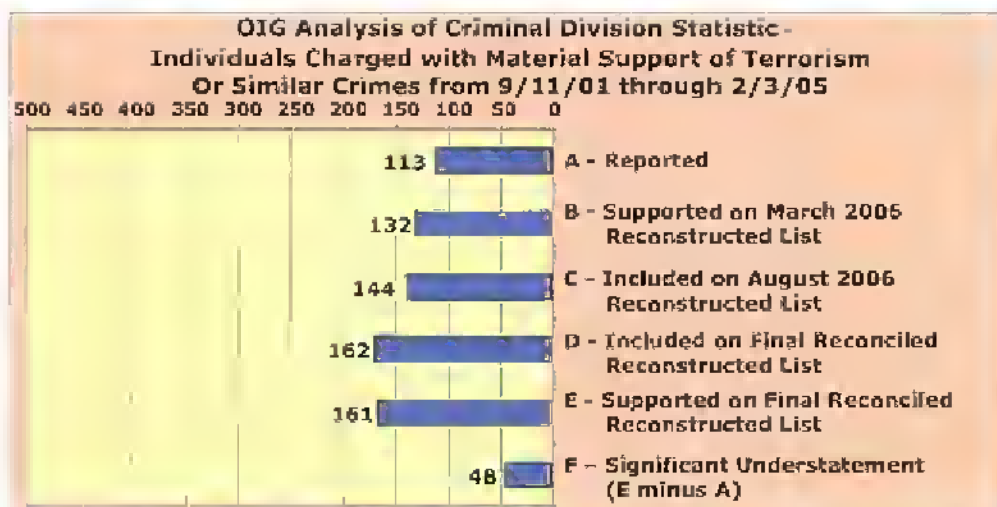


- 113 people were charged with material support of terrorism or similar crimes from September 11, 2001, through February 3, 2005.

As shown in the following charts, the support provided by the CTS regarding these statistics varied over time.



Source: Criminal Division budgets, OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff



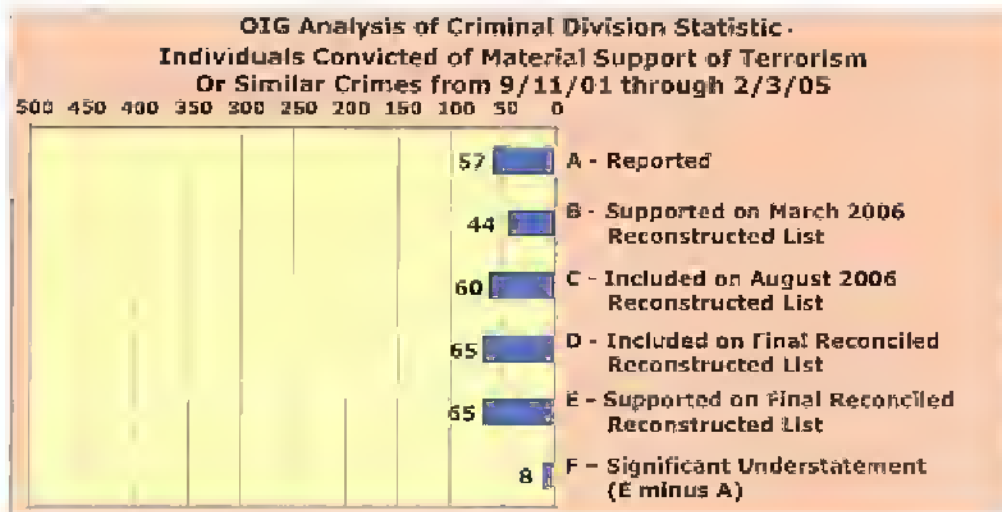
Source: Criminal Division budgets, OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff

As a result, the Criminal Division accurately reported that more than 89 individuals were charged in material support prosecutions and terrorist financing investigations from September 11, 2001, through August 5, 2004. However, the Criminal Division significantly understated the number of

people charged with material support of terrorism or similar crimes from September 11, 2001, through February 3, 2005.

#### **4. Individuals Convicted of Material Support of Terrorism or Similar Crimes**

In the FY 2006 President's Budget Request to Congress, the Criminal Division reported that 57 people were convicted of providing material support of terrorism or similar crimes from September 11, 2001, through February 3, 2005. As shown in the following chart, we found the updated database maintained by the CTS to track these statistics did not match the number reported.



Source: Criminal Division budgets, OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff

As a result, the Criminal Division significantly understated the number of individuals convicted of material support of terrorism or similar crimes from September 11, 2001, through February 3, 2005.

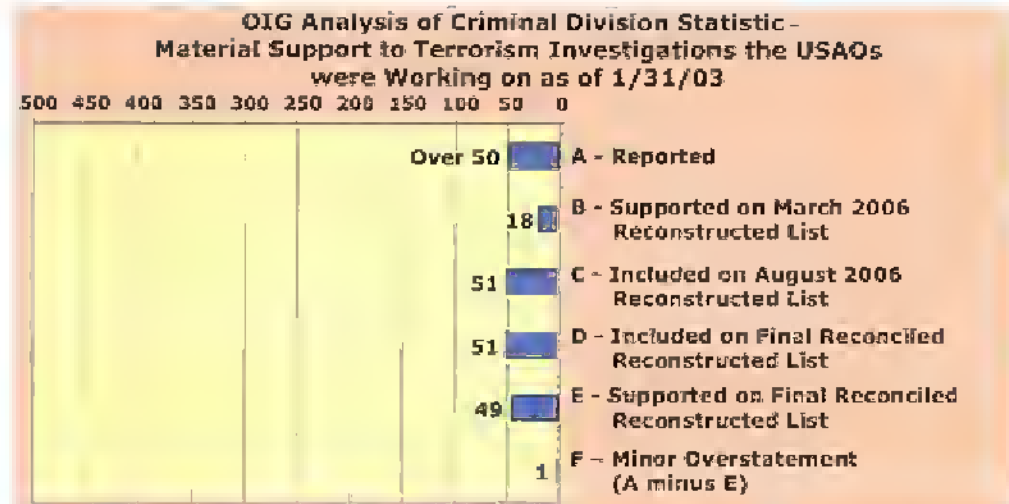
#### **5. Material Support to Terrorism Cases and Matters Participated in or Coordinated**

In various President's Budget Requests to Congress, the Criminal Division reported that it:

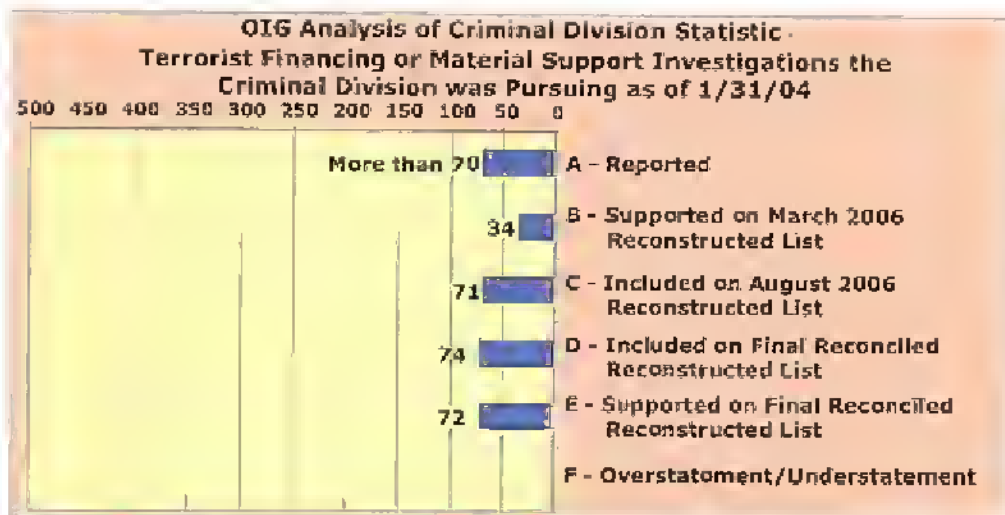
- was currently working with the USAOs in over 50 material support to terrorism investigations as of January 31, 2003 (FY 2004 President's Budget Request to Congress);

- was pursuing more than 70 terrorist financing or material support investigations as of January 31, 2004 (FY 2005 President's Budget Request to Congress);
- participated in or coordinated 70 material support to terrorism cases and matters from October 1, 2002, through September 30, 2003 (FY 2006 President's Budget Request to Congress); and
- participated in or coordinated 121 material support to terrorism cases and matters from October 1, 2003, through September 30, 2004 (FY 2006 President's Budget Request to Congress).

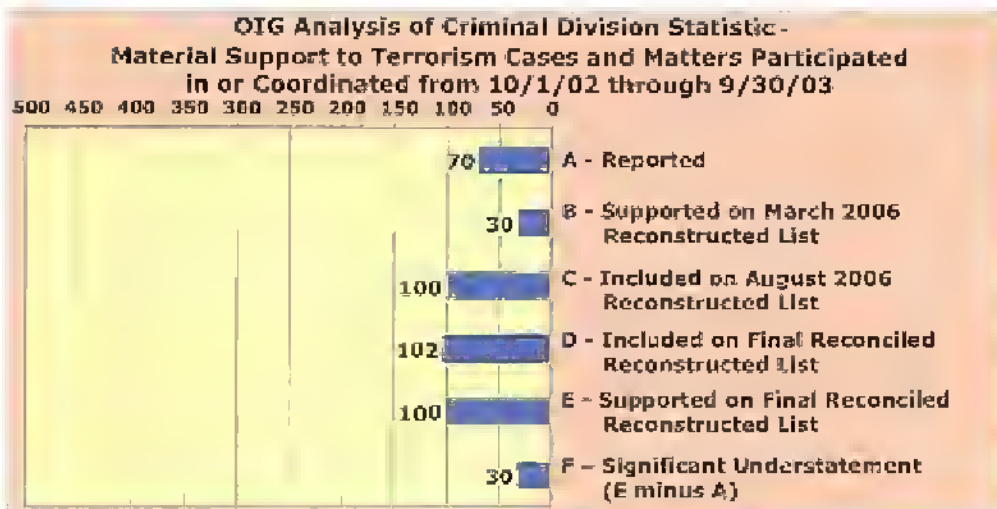
As shown in the following charts, the support provided by the CTS regarding these statistics varied over time.



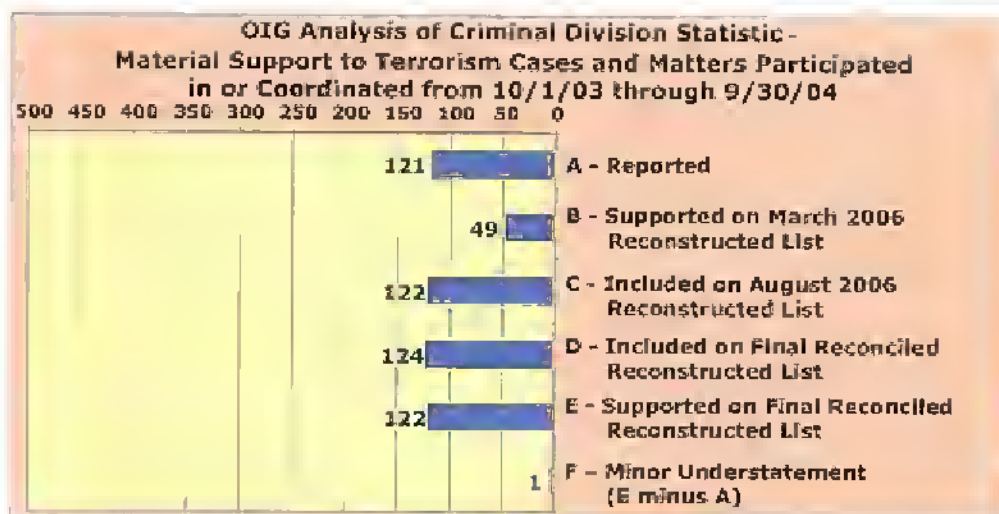
Source: Criminal Division budgets, OIG Interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff



Source: Criminal Division budgets, OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff



Source: Criminal Division budgets, OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff



Source: Criminal Division budgets, OIG interviews with Criminal Division staff, and analysis of documents provided by Criminal Division staff

As a result, the Criminal Division significantly understated the number of material support to terrorism cases and matters it participated in or coordinated during FY 2003. The Criminal Division overstated by a minor amount the number of material support to terrorism investigations the USAOs were working on as of January 31, 2003. The Criminal Division understated by a minor amount the number of material support to terrorism cases and matters it participated in or coordinated during FY 2004. The Criminal Division accurately reported the number of terrorist financing or material support investigations it was pursuing as of January 31, 2004.

In sum, during our audit the Criminal Division made two attempts to reconstruct support for the terrorism-related statistics we reviewed. We carefully evaluated each attempted reconstruction and found each to be significantly flawed. At the end of this process, we determined that the Criminal Division understated the five statistics we tested eight of the nine times the statistics were reported. The extensive efforts required by the Criminal Division to reconstruct reported statistics demonstrates that the Division had no effective reporting system and could easily and unintentionally misreport in the opposite direction, absent the implementation of effective procedures for gathering and reporting statistics.

### **OIG Conclusions**

Based on our testing, we found that the Department and its components did gather, classify, and report terrorism-related statistics accurately. The statistics were reported inaccurately primarily because Department components lacked internal controls for gathering, verifying, and reporting terrorism-related statistics.

The FBI, EOUSA, and the Criminal Division did not accurately report 24 of the 26 statistics we reviewed. Some of the statistics reported were overstated, while others were understated. These inaccuracies are important because Department management and Congress need accurate terrorism-related statistics to make informed budgetary and operational decisions.

### **Recommendations:**

To help ensure accurate collection and reporting of terrorism statistics, we recommend that the FBI, EOUSA, and the Criminal Division:

1. Establish and document internal control procedures for gathering, verifying, and reporting terrorism-related statistics.
2. Maintain documentation to identify the source of all terrorism-related statistics reported in official operational documents such as budget requests, performance plans, statistical reports, and others.
3. Maintain documentation of the procedures and systems used to gather or track the statistics reported.
4. Maintain documentation of the methodologies and procedures used to verify the accuracy of the statistics reported.
5. Ensure that terrorism-related statistics are not reported unless evidence is maintained to support the statistics.

We recommend that EOUSA and the USAOs:

6. Establish and implement procedures to recode transactions in the LIONS system when investigations that began as terrorism-related investigations do not link the case defendants to terrorist activity.

## **STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS**

As required by the *Government Auditing Standards*, we tested the Department's processes, controls, and records to obtain reasonable assurance that the Department complied with laws and regulations that, if not complied with, could have a material effect on the Department's ability to accurately report terrorism-related statistics. Compliance with laws and regulations applicable to the Department's reporting of such statistics is the responsibility of Department management. An audit includes examining, on a test basis, evidence about compliance with laws and regulations. The specific laws and regulations we reviewed included the relevant portions of:

- Office of Management and Budget Circular A-123, Management Accountability and Control; and
- United States Attorneys' Manual.

Except for instances of non-compliance identified in the Finding and Recommendations section of this report, the Department complied with the laws and regulations cited above. With respect to those activities not tested, nothing came to our attention that caused us to believe that the Department was not in compliance with the laws and regulations cited above.



## ACRONYMS

<b>Acronym</b>	<b>Description</b>
<b>ACS</b>	FBI's Automated Case Tracking System
<b>AUSA</b>	Assistant United States Attorney
<b>CTAS</b>	FBI's Counterterrorism Analysis Section
<b>CTS</b>	Criminal Division's Counterterrorism Section
<b>Department</b>	Department of Justice
<b>DSEAU</b>	FBI's Domestic Sunni Extremism Analysis Unit
<b>DTAU</b>	FBI's Domestic Terrorism Analysis Unit
<b>EOUSA</b>	Executive Office for United States Attorneys
<b>FBI</b>	Federal Bureau of Investigation
<b>FIDS</b>	FBI's Intelligence Information Reports Dissemination System
<b>FY</b>	Fiscal Year
<b>GAO</b>	Government Accountability Office
<b>GTAU</b>	FBI's Global Terrorism Analysis Unit
<b>IRCMU1</b>	FBI's Intelligence Requirements and Collection Management Unit 1
<b>ITOS</b>	International Terrorism Operations Section
<b>JMD</b>	Justice Management Division
<b>JTTF</b>	Joint Terrorism Task Force
<b>LIONS</b>	Legal Information Office Network System
<b>NTCS</b>	National Threat Center Section
<b>OIG</b>	Department of Justice Office of the Inspector General
<b>OMB</b>	Office of Management and Budget
<b>SMEAU</b>	FBI's Shia/Middle East Analysis Unit
<b>TAU</b>	FBI's Threat Analysis Unit
<b>TMU</b>	FBI's Threat Monitoring Unit
<b>TRRS</b>	FBI's Terrorism Reports and Requirements Section
<b>TTIC</b>	Terrorist Threat Integration Center
<b>TWWU</b>	FBI's Terrorist Watch and Warning Unit
<b>Unit</b>	(FBI's Counterterrorism Watch Unit)
<b>USAO</b>	United States Attorneys Office
<b>WMD/EWTAU</b>	FBI's Weapons of Mass Destruction/Emerging Weapons Threat Analysis Unit



## **APPENDIX I**

### **AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY**

Our objective was to determine if Department components and the Department as a whole properly gather, classify, and report accurate terrorism-related statistics. We conducted our audit in accordance with the *Government Auditing Standards* and included such tests as were considered necessary to accomplish our objectives. Our audit concentrated on, but was not limited to, the period October 1, 2000, through September 30, 2005.

We performed audit work at the Department's Office of Public Affairs, the Federal Bureau of Investigation (FBI) headquarters, the Criminal Division headquarters, the Executive Office for United States Attorneys (EOUSA) headquarters, and the Justice Management Division (JMD) headquarters, all in Washington, D.C. We also conducted audit work at the following FBI field offices and United States Attorney's Offices (USAO).

#### **FBI Field Offices**

- Atlanta, Georgia
- Baltimore, Maryland
- Charlotte, North Carolina
- Dallas, Texas
- El Paso, Texas
- Philadelphia, Pennsylvania
- Salt Lake City, Utah

#### **USAOs**

- Los Angeles, California
- Denver, Colorado
- Washington, D.C.
- Tampa, Florida
- Detroit, Michigan
- Newark, New Jersey
- Houston, Texas
- Alexandria, Virginia

We performed the following work at the Department's Office of Public Affairs, FBI headquarters, EOUSA headquarters, Criminal Division headquarters, and JMD headquarters:

## **APPENDIX I**

1. We developed a universe of 209 unique terrorism-related statistics reported by the Department and its components by:
  - interviewing key FBI, EOUSA, Criminal Division, and JMD personnel regarding internal and external documents in which terrorism-related statistics are reported;
  - searching the Department's websites for congressional testimony and speeches containing terrorism-related statistics; and
  - reviewing the documents identified through interviews and searches for terrorism-related statistics.
2. We reviewed documentation and interviewed Department officials to identify each of the 209 terrorism-related statistics reported for:
  - the period covered by the statistic;
  - the key FBI, EOUSA, Criminal Division, and Department personnel responsible (source) for tracking and reporting the statistic and what mechanisms (automated systems, case files, spreadsheets, and databases) were used to track the statistics;
  - the processes used to report the statistics and the internal controls established to ensure the accuracy of the reported statistics; and
  - how the statistic is used (operational decisions or informational purposes).
3. We excluded 17 of the 209 terrorism-related statistics from audit testing because we determined the statistics were reported by the Department but sourced to agencies outside the Department. The remaining 192 terrorism-related statistics were reported by and sourced to the FBI (121), EOUSA (20), the Criminal Division (14), and the Department as a whole (37).

## APPENDIX I

4. We divided the 192 terrorism-related statistics into two categories consisting of 123 operational statistics and 69 informational statistics. The operational statistics represent terrorism-related statistics reported in various documents including annual budgets, annual financial statements, performance plans and assessments, statistical reports, and other Department reports. The informational statistics represent statistics used in various forms such as speeches, press releases, and unclassified publications.
5. We excluded the 69 informational statistics from our audit because we judged them to be less significant to the war on terror than the 123 operational statistics.
6. We excluded 16 of the 123 operational statistics from testing because Department officials could not identify the source of the statistic (See Appendix II). Without the source, we could not determine whether internal controls had been established to ensure the accuracy of the statistics reported.
7. We excluded 48 of the 123 operational statistics from testing because the statistics, or the systems supporting them, had been previously reviewed by the OIG and recommendations made to correct deficiencies identified.
8. We used a risk level to decide which statistics to test by developing a method to weigh the level of risk that the remaining 59 operational statistics were reported accurately. We came up with the following six categories of risk and used a risk rating scale of one to three within each category with one being relatively low risk and three being relatively high risk.

**OIG's Methodology for Measuring  
Risk of Terrorism-Related Statistics**

<b>Risk Category/ Rating Elements</b>	<b>Risk Rating</b>
<b>1. Frequency of use</b>	
Reported 1 to 3 times	1
Reported 4 to 10 times	2
Reported 11 to 35 times	3

## APPENDIX I

Risk Category/ Rating Elements	Risk Rating
<b>2. Internal controls</b>	
Established and documented	1
Established but not documented	2
Not established	3
<b>3. Magnitude of the statistic reported<sup>60</sup></b>	
From 0 to 1,000	1
From 1,001 to 10,000	2
Greater than 10,000, to include any dollar-related numbers, percentages, and hours	3
<b>4. Inconsistencies in statistics reported</b>	
No inconsistencies	1
One inconsistency	2
Multiple inconsistencies	3
<b>5. Reported in informational formats by others</b>	
Reported by other than the Attorney General, Deputy Attorney General, FBI Director, or EOUSA	1
Reported by EOUSA	2
Reported by the Attorney General, Deputy Attorney General, or FBI Director	3
<b>6. Preciseness of the statistic reported</b>	
No operational statistics in group are precisely stated	1
Some operational statistics in group are precisely stated	2
All operational statistics in group are precisely stated	3

We calculated an overall average risk score for each of the 59 operational statistics by adding the risk rating assigned for each of the six risk categories and then dividing this sum by six.

- We selected the following 26 of the 59 operational statistics (FBI – 10, EOUSA – 11, Criminal Division – 5) for audit testing based on the risk rating we calculated and on our judgment of the significance of the statistic to the war on terror.

<sup>60</sup> The magnitude of the statistic reported relates to the quantitative number associated with the statistic. For example, a statistic reported as being 2 is probably less likely to be inaccurate than a statistic reported as being 10,247.

## APPENDIX I

### Terrorism-Related Statistics Selected for Detailed Testing

<b>Description of Statistic</b>	<b>Primary Reporting Agency</b>	<b>System Used to Track Statistic</b>
1. Number of Intelligence Information Reports issued	FBI	Terrorism Reports and Requirements Section's database
2. Number of threats tracked	FBI	Threat Monitoring Unit's spreadsheet database and Guardian Threat Tracking System
3. Number of threats to transportation and facilities	FBI	Counterterrorism Watch's Operational Support Log and spreadsheet summary
4. Number of threats to people and cities	FBI	Counterterrorism Watch's Operational Support Log and spreadsheet summary
5. Intelligence Assessments issued	FBI	Global Terrorism Analysis Unit's database
6. Number of intelligence products produced/ disseminated to the U.S. Intelligence Community and appropriate federal elements	FBI	Intelligence Requirements and Collection Management Unit 1's spreadsheet
7. Number of Intelligence Bulletins issued	FBI	Global Terrorism Analysis Unit's database and the Threat Analysis Unit's word processing file
8. Number of Counterterrorism threat assessments produced	FBI	Threat Analysis Unit's word processing file
9. Number of Presidential Terrorist Threat Reports produced	FBI	Global Terrorism Analysis Unit's database
10. Number of convictions	FBI	Integrated Statistical Reporting and Analysis System
11. Number of individuals charged as a result of terrorism investigations	Criminal Division	Counterterrorism Section's database

## APPENDIX I

<b>Description of Statistic</b>	<b>Primary Reporting Agency</b>	<b>System Used to Track Statistic</b>
12. Number of individuals who have been convicted or pleaded guilty as a result of terrorism investigations	Criminal Division	Counterterrorism Section's database
13. Number of people charged with material support of terrorism or similar crimes	Criminal Division	Counterterrorism Section's database
14. Number of people convicted of material support of terrorism or similar crimes	Criminal Division	Counterterrorism Section's database
15. Number of material support to terrorism cases and matters the Criminal Division participated in or coordinated	Criminal Division	Deputy Chief of Counterterrorism Section's manual count based on e-mails received from Counterterrorism Section attorneys and the Deputy for Terrorist Financing
16. Number cases filed – defendants for program activity anti-terrorism	EOUSA	EOUSA LIONS
17. Number of terrorism convictions	EOUSA	EOUSA LIONS
18. Number of terrorism-related convictions	EOUSA	EOUSA LIONS
19. Number sentenced to prison – defendants for program activity anti-terrorism	EOUSA	EOUSA LIONS
20. Number prosecuted – defendants for program activity anti-terrorism	EOUSA	EOUSA LIONS
21. Number guilty – defendants for program activity anti-terrorism	EOUSA	EOUSA LIONS

## APPENDIX I

<b>Description of Statistic</b>	<b>Primary Reporting Agency</b>	<b>System Used to Track Statistic</b>
22. Number of terrorism cases tried	EOUSA	EOUSA LIONS
23. Number of terrorism and anti-terrorism cases against defendants that were terminated	EOUSA	EOUSA LIONS
24. Number of terrorism and anti-terrorism cases pending	EOUSA	EOUSA LIONS
25. Number of defendants that the U.S. Attorneys terminated terrorism and anti-terrorism cases against	EOUSA	EOUSA LIONS
26. Percentage of defendants whose cases were terminated that were convicted	EOUSA	EOUSA LIONS

10. We interviewed Department officials and reviewed supporting documentation to determine whether the 26 operational statistics were accurately reported.

At the FBI field offices and USAOs visited, we interviewed FBI and USAO officials and reviewed case file documentation to determine whether the following FBI and USAO statistics were accurately reported.

For the Criminal Division statistics we reviewed, we initially reviewed reconstructed data provided to us in March 2006 by the Criminal Division to support the numbers reported. In August 2006 we discussed with Criminal Division officials our audit results that showed the statistics reported by the Criminal Division were not accurately reported. The Criminal Division believed it could support all the numbers reported so we agreed to review additional support that the Criminal Division said it could provide. In August 2006, the Criminal Division provided another set of reconstructed lists to support the statistics we tested. We met with Criminal Division officials and reconciled the March 2006 data to the August 2006 data. We then selected a sample of transactions for each statistic and analyzed supporting documentation provided by the Criminal Division to ensure the cases reported were linked to terrorism and occurred during the reporting period.

## **APPENDIX I**

### **Methodology for Sampling the FBI Statistic on Number of Convictions**

The FBI's FY 2006 - FY 2011 Performance Plan includes a performance goal to "Prevent, disrupt, and defeat terrorist operations before they occur." In its FY 2006 - FY 2011 Performance Plan, the FBI reported that its investigations resulted in 206 convictions during FY 2004 towards the achievement of this performance goal. To determine the accuracy of the reported convictions, we:

- obtained a listing from the FBI showing details of the 206 convictions reported for FY 2004;
- selected a judgmental sample of 107 of the 206 convictions by selecting all the convictions reported by the 7 FBI field offices with the highest number of reported convictions (El Paso, Texas - 32; Dallas, Texas - 22; Salt Lake City, Utah - 17; Atlanta, Georgia - 12; Richmond, Virginia - 10; Philadelphia, Pennsylvania - 8; and Charlotte, North Carolina - 6); and
- reviewed the case files and held discussions with the case agents regarding whether the individuals were convicted of or pleaded guilty to crimes under a terrorism statute, and how the convictions met the FBI's Performance Goal of "Prevent, disrupt, and defeat terrorist operations before they occur."

### **Methodology for Sampling EOUSA Statistics**

For the 11 EOUSA operational statistics that we selected for detailed testing that were reported 20 times, we obtained listings from the LIONS system that is used to record data for the statistics reported. We then compared the LIONS data to the number reported for each statistic to determine if the LIONS data agreed with the reported number. Our comparison showed the following.



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### Comparison of LIONS Data to Reported EOUSA Statistics

<b>Statistic Description</b>	<b>Number Reported</b>	<b>LIONS Data Agreed With Number Reported</b>
1. Number cases filed – Defendants under the anti-terrorism program activity	365 in FY 2002	No
	786 in FY 2003	Yes
	725 in FY 2004 <sup>61</sup>	Yes <sup>61</sup>
2. Number of terrorism convictions	103 in FY 2003	Yes
	118 in FY 2004	Yes
3. Number of terrorism-related convictions	558 in FY 2003	Yes
	379 in FY 2004	Yes
4. Number of defendants sentenced to prison under the anti-terrorism program activity	264 in FY 2003	Yes
	256 in FY 2004	Yes
5. Number of defendants prosecuted under the anti-terrorism program activity	245 in FY 2002	No
6. Number of defendants found guilty under the anti-terrorism program activity	153 in FY 2002	No
7. Number of terrorism cases tried	3 in FY 2001	No
8. Number of terrorism and anti-terrorism cases against defendants that were terminated	682 in FY 2003	Yes
	504 in FY 2004	Yes
9. Number of terrorism and anti-terrorism cases pending	737 in FY 2002	Yes
	637 in FY 2003	Yes
	719 in FY 2004	Yes
10. Number of defendants the U.S. Attorneys terminated terrorism and anti-terrorism cases against	643 in FY 2004	Yes
11. Percentage of defendants whose cases were terminated that were convicted	87% in FY 2003	Yes

<sup>61</sup> The 725 reported for FY 2004 was reported twice – once in the U.S. Attorneys FY 2004 Annual Statistical Report and once in the FY 2006 President's Budget Request to Congress.

## APPENDIX I

For the 16 times where numbers reported for the 8 statistics agreed with the LIONS data, we performed additional testing to determine if the data recorded in LIONS was accurate. We selected a judgmental sample for each of the 16 times the 8 statistics were reported by:

- obtaining a spreadsheet showing the number of transactions reported for each statistic by a United States Attorney's District Office,
- calculating the total number of transactions reported for each district office for all 16 times the statistics were reported,
- selecting the 8 district offices that reported more than 200 total transactions for the 16 times the statistics were reported, and
- reviewing all the transactions reported by these 8 district offices for each of the 16 times the statistics were reported.

The following table shows the number of transactions selected for each of the 16 times the 8 statistics were reported.

**Samples Selected for EOUSA Statistics Where the LIONS Data Matched the Statistic Reported**

<b>Statistic Description</b>	<b>Number Reported</b>	<b>Transactions Sampled</b>
1. Number cases filed – Defendants under the anti-terrorism program activity	786 in FY 2003	268
	725 in FY 2004 <sup>62</sup>	338
2. Number of terrorism convictions	103 in FY 2003	30
	118 in FY 2004	40
3. Number of terrorism-related convictions	558 in FY 2003	301
	379 in FY 2004	166
4. Number of defendants sentenced to prison under the anti-terrorism program activity	264 in FY 2003	81
	256 in FY 2004	91

<sup>62</sup> The 725 reported for FY 2004 was reported twice – once in the U.S. Attorneys FY 2004 Annual Statistical Report and once in the FY 2006 President's Budget Request to Congress.

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<b>Statistic Description</b>	<b>Number Reported</b>	<b>Transactions Sampled</b>
5. Number of terrorism and anti-terrorism cases against defendants that were terminated	682 in FY 2003	364
	504 in FY 2004	240
6. Number of terrorism and anti-terrorism cases pending	737 in FY 2002	487
	637 in FY 2003	335
	719 in FY 2004	362
7. Number of defendants the U.S. Attorneys terminated terrorism and anti-terrorism cases against	643 in FY 2004	294
8. Percentage of defendants whose cases were terminated that were convicted	87% in FY 2003	364

**APPENDIX II****OPERATIONAL TERRORISM STATISTICS FOR  
WHICH DEPARTMENT OFFICIALS COULD NOT IDENTIFY  
THE SOURCE OF THE STATISTIC**

<b>Statistic Reported</b>	<b>Where Reported</b>
1. Number of Intelligence Reports containing financial information in support of on-going high-priority terrorism investigations	FBI's FY 2005 President's Budget Request to Congress
2. Number of disrupted donors related to terrorist financing	FBI's FY 2005 President's Budget Request to Congress
3. Number of disrupted fundraisers related to terrorist financing	FBI's FY 2005 President's Budget Request to Congress
4. Number of disrupted facilitators related to terrorist financing	FBI's FY 2005 President's Budget Request to Congress
5. Number of disrupted financial intermediaries related to terrorist financing	FBI's FY 2005 President's Budget Request to Congress
6. a. Number of calls received on the FBI's 1-800 Tip-line	FBI's FY 2003 President's Budget Request to Congress
6. b. Number of calls received and processed during the operation of the Tip-Line	FBI Congressional Testimony dated 4-23-02
7. Number of events conducted by the Strategic Information and Operations Center	FBI's FY 2003 President's Budget Request to Congress
8. Number of analytical work products furnished to the International Terrorism Program	FBI's FY 2003 President's Budget Request to Congress
9. Number of weapons of mass destruction cases initiated by the FBI and supported by the Hazardous Material Response Unit	FBI's FY 2003 President's Budget Request to Congress
10. Number of FBI Forecasts: Drivers and threat reports issued	FBI's FY 2006 - FY 2011 Performance Plan
11. Number of weapons of mass destruction/emerging weapons threat-related intelligence assessments issued	FBI's FY 2006 - FY 2011 Performance Plan
12. Number of weapons of mass destruction related incidents for which the Laboratory Response Network for Bioterrorism has analyzed evidence	FBI's FY 2003 President's Budget Request to Congress

## APPENDIX II

<b>Statistic Reported</b>	<b>Where Reported</b>
13. Number of new AUSAs as a result of building a long-term counterterrorism policy	Attorney General Congressional Testimony dated 4-1-03
14. Number of convictions or guilty pleas resulting from 70 investigations into terrorist financing	Attorney General Congressional Testimony dated 3-6-03 and 4-1-03
15. Number of major alien smuggling networks disrupted as a result of the Department disrupting potential terrorist travel	Attorney General Congressional Testimony dated 3-6-03 and 4-1-03
16. Number of subpoenas and search warrants issued to gather and cultivate detailed intelligence on terrorists in the U.S.	Attorney General Congressional Testimony dated 3-6-03 and 4-1-03

## APPENDIX III

### DEPARTMENT COMPONENT RESPONSES TO THE DRAFT AUDIT REPORT

#### FBI RESPONSE



U.S. Department of Justice

Federal Bureau of Investigation

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Washington, D.C. 20535-0001

January 16, 2007

The Honorable Glenn A. Fine  
Office of the Inspector General  
United States Department of Justice  
Room 4322  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

SUBJECT: RESPONSE TO OIG REPORT ON TERRORISM STATISTICS

Dear Mr. Fine:

This letter is submitted by the Federal Bureau of Investigation (FBI) in response to the audit report by the Office of Inspector General (OIG) entitled, The Department of Justice's Internal Controls over Terrorism Reporting (hereinafter the Report).

The FBI appreciates the opportunity to comment and agrees fully with OIG that the FBI must collect and maintain accurate statistics on the important national security work being done at FBI Headquarters (FBIHQ) and in our Field Offices and Legats around the globe. Before we address the specific points raised in the Report, we offer some general comments applicable to all ten statistics reviewed by OIG.

First, since the period examined by the Report, the FBI has modified and improved substantially the systems and internal controls related to terrorism reporting. Please bear in mind that following September 11, 2001, the FBI underwent a substantial reorganization and restructuring, and many of the apparent weaknesses in statistical reporting discussed in the Report occurred during, and were an outgrowth of, that reorganization and restructuring. The backbone of the FBI's statistical reporting system is the case management and supporting information technology systems. As you are aware, these systems as a whole are being upgraded as part of our Sentinel project and were not originally designed to capture and report on the enhanced requirements developed as part of the FBI's reorganization and restructuring after September 11, 2001. The FBI recognized this challenge in 2002 and began a concentrated effort to build supporting systems that capture and report on the organization's upgraded intelligence mission and to embed additional internal controls. The FBI has made significant progress in the development and implementation of these systems.

Also since the time period examined by the Report, the FBI has made significant strides in the development of a new central management information system known as COMPASS. COMPASS accumulates statistical accomplishments from various stand alone

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systems and presents the information in a unified format and is available to all senior managers at FBIHQ and our Field Offices. COMPASS is one illustration of the FBI's commitment to improve and share statistical reporting with our senior managers. The bulk of the information captured in COMPASS is used internally to identify trends and evaluate progress against our defined strategic objectives. Over the past 12 months extensive efforts have been made to redefine performance metrics that illustrate the FBI's achievements against strategic outcomes.

Many of the performance metrics currently under development will require new information collection systems and this OIG report reinforces the need to clearly define policy and process for the collection, verification and reporting of metrics.

### 1. (U) Number of Terrorism Related Convictions

In reviewing the FBI's calculation of terrorism-related convictions in FY 2004, the Report states that the convictions are overstated because the FBI initially coded the investigative cases as terrorism-related when the cases were opened, but did not recode cases based on the actual conviction that resulted from the investigation. While we agree that a case must have a terrorism nexus to be properly coded as terrorism-related, we do not agree that it must result in a charge or conviction for a terrorism offense. To require the ultimate charge to be a terrorism offense and to be coded as such would be at odds with the FBI's post 9/11 mission to prevent, disrupt, and defeat terrorist operations before they occur. In pursuit of this mission the FBI's counterterrorism strategy focuses resources at the detection, penetration and dismantlement of terrorist enterprises. The law enforcement and intelligence communities recognize that operatives of terror networks are often involved in precursor crimes such as illegal immigration, passport and identity forgery, financial fraud and robbery to facilitate the movement of people, fund operations, and procure weapons and explosives. The need to pursue criminal activity by terrorists to fund their operations also provides the opportunity for detection and disruption of planned attacks. Law enforcement officials with expertise on counterterrorism are in the best position to pursue these precursor crimes and link them potentially to a terror financing operation. Today, the Joint Terrorism Task Forces (JTTFs) represent those law enforcement and intelligence officials with the expertise to pursue these types of investigations.

The FBI has created over 100 JTTFs across the country, including at least one in each of the FBI's 56 field offices. The JTTFs, which consist of FBI Special Agents, other federal agents, and state and local law enforcement officers, have a two-fold mission: (1) to prevent terrorist attacks before they occur and (2) to mount an immediate investigative response when an act of terrorism has occurred. In order to prevent terrorist attacks from occurring, the JTTFs aggressively investigate and prosecute individuals and groups who may pose a threat to U.S. persons and interests. For a variety of reasons, often these prosecutions do not yield convictions on terrorism offenses. However, this does not mean that the efforts of the JTTFs are not terrorism-related. In each case, the FBI's management team must evaluate the value of successful intelligence collection designed to detect, penetrate and dismantle terror networks before they act. This evaluation often leads to a law enforcement action to pursue, for instance, a false statement or immigration charge as the best way quickly to disrupt a potential terrorist plot and resolve a properly predicated terrorism investigation. In other cases, the intelligence cost in presenting all known evidence against an individual outweighs the benefit of pursuing terrorism offenses. In either circumstance, the efforts of the JTTFs are by their nature terrorism related, and for this reason, the FBI disagrees with the OIG's suggestion that the FBI should recode



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investigations that the JTTFs handle based on the type of criminal charges ultimately filed at the conclusion of the case.

### The OIG Investigative Sample

The OIG shared with the FBI its audit sample in regards to the classification of terrorism convictions. It is important to note that the entire sample involves cases classified by the FBI as domestic terrorism investigations. Indeed, there were no international terrorism investigations within the sample pool.

The sample pool of 206 convictions involved the work of seven FBI field offices. Within the sample pool, the Report identified 65 convictions that could not be supported as terrorism-related. Within this sample, 23 of the 65 convictions challenged by the OIG represent the outcome of 12 investigations into Fraud and Related Activity involving Passports, VISAs and Identity Documents. These investigations did involve individuals and groups involved in the trafficking of fraudulent documents. Upon review, these investigations did not have a direct tie to known domestic terrorism groups, although the follow-on prosecutions did focus on violations of the False Identification Crime Control Act of 1982. This error appears to have been caused by a lack of understanding and clear program guidance on the pursuit of violations involving the False Identification Crime Control Act of 1982. The FBI has provided greater oversight to its field offices involving all domestic terrorism investigations and has strengthened controls over the classification of these investigations.

Of the 65 convictions challenged by the OIG, 33 convictions involve five investigations of criminal activity associated with domestic terrorism. One of the investigations involved a group of self-proclaimed white supremacists. The investigation focused on fully identifying and disrupting the members of this organization whose declared mission was to train and prepare for future violent race conflicts. This investigation led to the successful prosecution of 29 members and the disruption of this organization. Each of these white-supremacist gang members was prosecuted for illegal narcotics distribution. The remainder of the sample pool included one investigation predicated on letters sent to a Federal District Court Judge stating the letters were contaminated with Anthrax and a second investigation was predicated on a report of missing vials of Yersinia Pestis bacteria. Both investigations led to prosecutions of individuals who fabricated a threat to the public. The FBI does not agree that the results of these domestic terrorism investigations should be reclassified because a terrorism charge was not used by the prosecutors. The seven remaining prosecutions challenged involve duplications and appear to be clerical errors.

In 2004 and 2005, the FBI's Counterterrorism Division provided field offices with additional policy guidance on the investigations of matters within the Domestic Terrorism Program. Today fraud cases involving passports, VISAs and identification documents would not be pursued within the Domestic Terrorism Program without predication involving a domestic terrorist connection. In the past year, FBIHQ has initiated case file reviews involving the Domestic Terrorism investigative portfolio to ensure compliance with policy. This additional oversight of domestic terrorism criminal investigations provides improved internal controls to ensure proper predication and greater collaboration on the timely and successful resolution of these cases. In the future greater effort will be made to differentiate between International and Domestic Terrorism statistics.

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### Internal Controls over Case Initiations

Examination of the detailed process for initiation of a counterterrorism investigation further demonstrates the internal controls exercised by the FBI to properly classify as terrorism-related all convictions obtained through the investigative efforts of JTTFs. The FBI has an established process for the initiation of counterterrorism operations. This process conforms as appropriate to the Attorney General's Guidelines for National Security Investigations and the Attorney General's Guidelines for Criminal Investigations.

### The FBI's Case Initiation Process

Upon receipt of information that points to an allegation or suspicion that an individual or group potentially is involved in activity in support or execution of a terror plot, Special Agents, Task Force Personnel, Intelligence Analysts and/or professional support personnel, and a Field Supervisory Special Agent review the information in order to conduct a threat assessment and to determine whether to initiate an investigation. Often, the Special Agent in Charge or the Assistant Special Agent in Charge in the Field Office will review these new case initiations for compliance with FBI standards and situational awareness requirements.

### Headquarters Approval

Within 10 days of initiating the investigation, the field office must transmit a summary of the predication to FBIHQ for review by substantive investigative supervisors.

If these supervisors determine that a terrorism nexus does not exist, FBIHQ will advise the field office to reclassify the investigation and to move the case to a more appropriate investigative team. Once FBIHQ agrees that the information properly warrants a terrorism investigation, the JTTF conducts its investigation with the primary purpose being to detect, penetrate, and disrupt terrorist networks and enterprise efforts. At the time that FBIHQ concurs with the appropriate predication of each investigation the opening communication is transmitted to the Department of Justice for review. After evaluating the totality of the investigative findings, the FBI will pursue criminal charges as appropriate. Regardless of the nature of the criminal charges, given the mission of the JTTFs and the requirement of a terrorism nexus to JTTF investigations, the FBI correctly classifies as terrorism-related any conviction that results from an appropriately predicated counterterrorism investigation and the work of counterterrorism agents.

### Enhanced Controls

In an effort to enhance the internal controls and improve centralized management of investigations, the Counterterrorism Division last year implemented a case review process. This process involves an FBIHQ review of each pending investigation every 90 to 120 days. This review looks at investigative findings and facilitates a discussion with each field office on their investigative plan and effort to mitigate any potential threat to national security.

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### 2. (U) Intelligence Information Reports

The OIG Report next examined the tracking of Intelligence Information Reports (IIRs) issued by the FBI in FY 2003 and FY 2004. IIRs represent an intelligence report in the form of an electronic teletype message that provides for timely dissemination of unevaluated, raw intelligence within the US intelligence and federal law enforcement communities. The FBI believes that the statistics reviewed by the IG demonstrate that adequate internal controls existed in FY 2003 and 2004. Specifically, OIG determined that the FBI reported issuing 1,731 IIRs in FY 2003, while the OIG found support for 1,638. Thus, according to the Report, the FBI overstated by 93, or 5.7%. For FY 2004, the OIG indicates that the FBI reported issuing 2,622 IIRs, with support found by the OIG for 2,679, yielding an underreporting of 57, or 2.1%. Viewed together, the FBI reported issuing 4,353 IIRs in FY 2003 and FY 2004, while the OIG found support for 4,317, an overstatement of 36, or less than 1%. More importantly, however, the FBI's system for tracking the number of IIRs issued has improved since FY 2004.

Prior to September 11, 2001, the FBI's Counterterrorism Program had produced very few IIRs, and there was no formal process for the collection and dissemination of IIRs prepared by FBI field offices. Beginning in 2002, the FBI began to create an embedded intelligence process across all investigative programs. This restructuring was advanced with the creation of the Directorate of Intelligence in February 2005, as part of the FBI's National Security Branch. The mission of the Directorate of Intelligence is to embed the intelligence cycle within the FBI and to create the supporting infrastructure necessary to successfully execute the intelligence mission.

Since FY 2004, the last period that the OIG examined, the FBI has instituted a system for more accurately measuring and recording IIR dissemination. Since the period examined by the Report, the FBI has created the Intelligence Report Disseminations System (FIDS), an automated tracking system that electronically connects all FBI Field Offices and FBIHQ. FIDS transmits IIR documents between the participants in the IIR process and allows them to track the progress of IIRs. FIDS became operational on November 15, 2004, which is beyond the period under review by the OIG. Additionally, in 2006, the FBI developed an accurate, viable performance measure which counts IIR dissemination by its messaging system. This metric was not in use in FY 2004, but now reports on a monthly basis IIR dissemination by investigative program, including the Counterterrorism Program. This metric is now used by the FBI to report IIR statistics to external authorities for all program areas, and supersedes the "number of IIRs issued" data reported by individual programs. Accordingly, although the FBI believes that review of the statistics for FY 2003 and FY 2004 indicates that certain controls existed to track the number of IIRs disseminated, the FBI has improved considerably its systems of internal controls in this area, demonstrating the FBI's commitment to the accurate reporting of statistical accomplishments.

### 3. (U) Intelligence Assessments

The OIG's analysis of Intelligence Assessments (IAs) focused on those issued during FY 2004. At that time, each investigative division was responsible for tracking production of its own Intelligence Assessments (IAs). Since late 2006, the Directorate of Intelligence has assumed responsibility for tracking the approved production of IAs. The Directorate of Intelligence has a dedicated unit, the Strategic Analysis and Production Unit (SAPU), which acts as a focal point for collection of statistics on IA production, as opposed to

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allowing individual divisions to define production across multiple elements. We therefore believe that the FBI has now implemented a system that improves our internal controls and consistently and accurately tracks IAs produced.

4. (U) Intelligence Bulletins

The OIG's analysis of Intelligence Bulletins focused on those issued in FY 2004. As indicated in the Report, the FBI changed the formal Standard Operating Procedures in June of 2004 (the Report indicates that changes occurred in 2006). As a result of these new procedures, on August 6, 2004, the FBI began publishing in the header of each new Intelligence Bulletin the sequentially issued number for each publication. As of December 26, 2006, the FBI had issued 232 Intelligence Bulletins. The FBI believes that the new procedures have strengthened the internal controls used to track the number of Intelligence Bulletins issued by the FBI and has eliminated the problems that existed in FY 2004.

5. (U) Intelligence Products Produced/Disseminated

The FBI's FY 2004 statistic providing the number of intelligence products produced/disseminated to the United States Intelligence Community (and appropriate federal agencies) involved several errors on our part. This statistical measure was poorly worded and led to confusion about what it was actually intended to measure and report. For this reason, this was the only time the measure was used. The FBI has not repeated its use in subsequent years. We recognize that we did not develop a clear, well-defined metric to capture what was initially intended to be reported. In the future, our new reporting systems and closer oversight will help prevent such errors from reoccurring.

6. (U) Terrorist Threats

The Report also examined the FBI's tracking of the number of terrorist threats received in FY 2003 and FY 2004. The FBI acknowledges that its internal controls were not optimal during this period. While the Report indicated that since September 2004, the FBI has utilized the Guardian Threat Management System (Guardian) to track terror threats, the Report does not capture the full extent of the FBI's improved threat tracking capabilities since September 11.

Before 9/11, no central collection system for threats existed within the FBI. After 9/11, Director Mueller established a policy requiring an FBI response to all terrorism threats and mandating that the FBI pursue each threat to a logical conclusion. Concurrently, the Director also created CT Watch within the Counterterrorism Division to serve as a situational awareness center with an operational capacity to oversee the resolution of threats. During 2002, FBIHQ learned of threats through (1) field office reporting in the form of an Urgent Report to FBIHQ, (2) less formal communications between field offices and FBIHQ, and (3) threat reporting supplied by the Intelligence Community. The FBI recognized that this process, which represented only the most significant threats and suspicious activity as evaluated by FBI field office management, was inadequate. Thus, during 2003, the Counterterrorism Division began a concentrated effort to establish a centralized reporting system to capture potential terrorism threats and suspicious activity. This culminated in the release of the Guardian System in July 2004.

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With Guardian, the FBI has mandated all field offices to enter threats and suspicious activity in a near-real time manner. In addition to collecting threat and suspicious activity reporting, Guardian also serves as a repository for the investigative steps and investigative results achieved by each field office. The FBI deployed an improved version of Guardian (version 2.0) in the fall of 2006, and it serves as a continuation of a centralized threat management system with enhanced metrics and tracking capabilities. Since July 2004, the FBI has captured over 80,000 threats and suspicious activities reports in Guardian and Guardian 2.0. Moreover, the FBI has created the Threat Resolution Unit within the National Threat Center Section, whose sole mission is the review and oversight of efforts to collect and resolve counterterrorism threats. Thus, the FBI's system for tracking terrorist threats has improved markedly since FY 2004, which is the last period that the OIG reviewed.

7. (U) Terrorist Threats to Transportation and Facilities and g. (U) Terrorist Threats to People and Cities

As with Category 6, Terrorist Threats, the FBI acknowledges that its internal controls regarding the tracking of threats to transportation and facilities as well as to people and cities were not optimal during the period that OIG reviewed. However, the development and implementation of Guardian and Guardian 2.0, which occurred after FY 2004, provides significant internal controls, and demonstrates the FBI's commitment to maintaining accurate records and statistics. The Guardian 2.0 application provides additional guidance on the categorization of threats and the field office selections are review by FBIHQ daily.

9. (U) Counterterrorism Threat Assessments

The OIG's analysis identified a clerical error that resulted in the overstatement of 12 Threat Assessments in FY 2004. Threat assessments actually produced in 2003 were included by mistake in the statistics for FY2004.

10. (U) Presidential Terrorist Threat Reports

The OIG's analysis identified a clerical error involving the reporting of Presidential Terrorist Threat Reports in FY 2004. This statistic appears to have involved the reporting of calendar year figures rather than fiscal year figures. As part of the evolution of the national intelligence reporting process, Presidential Terrorist Threat Reports are now produced as a community product by the National Counterterrorism Center and are now labeled as National Terrorism Bulletins.

### Recommendations

All of the OIG's recommendations below outline important and necessary controls for the accurate reporting of terrorism statistics. Indeed, the FBI believes that the steps taken since 9/11, as outlined above, reflect our agreement with and adoption of most of the IG's recommendations. As described above, as part of the FBI's substantial reorganization and restructuring after September 11, 2001, the FBI has made improvements to its statistical reporting systems, specifically the case management and supporting information technology programs. Thus, the FBI believes that its internal controls over terrorism statistics today are much improved over the controls that existed in FY 2003 and FY 2004, the period on which the

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OIG Report focused. With that in mind, the FBI responds to the recommendations below as follows:

1. Establish and document internal control procedures for gathering, verifying, and reporting terrorism-related statistics.

Although the FBI agrees with the OIG on the importance of internal controls, a portion of the OIG Report concerns the definition of a terrorism-related conviction. As discussed above, the FBI believes that its current system of classifying as terrorism-related all convictions that arise from investigations that have a terrorism nexus is appropriate. There were isolated exceptions noted by the OIG involving investigations of passport, VISA and identification fraud originally captured within the Domestic Terrorism Program. Improved oversight at FBIHQ and enhanced policy guidance have strengthened the internal controls and will limit these instances in the future.

The FBI has established and documented internal control procedures for gathering, verifying, and reporting terrorism-related statistics. In the development and improvement of our information systems we will continue to ensure that audit functions exist and that statistical reporting will provide adequate details for review and analysis.

2. Maintain documentation to identify the source of all terrorism-related statistics reported in official operational documents such as budget requests, performance plans, statistical reports, and others.

The FBI will establish a process of maintaining supporting documentation identifying the original source of terrorism-related statistics. The Counterterrorism Division and the Finance Divisions will work together to establish a formal process to maintain supporting documentation and establish appropriate record retention policy.

3. Maintain documentation of the procedures any systems used to gather or track the statistics reported.

As noted in the response above the Counterterrorism and Finance Divisions will establish a process to maintain the supporting documentation which will provide an audit trail on the systems utilized and any unique procedures followed to accumulate the data.

4. Maintain documentation of the methodologies and procedures used to verify the accuracy of the statistics reported.

The FBI documentation of the methodologies and procedures used to verify statistical accuracy rests with the entities that have program oversight of the systems that capture the data. Much of the process for reviewing statistical accuracy centers on the trend analysis conducted in the field and at FBIHQ which identifies anomalies for further review. The FBI will continue this process. One of the internal controls exercised by the FBI involves the formal Inspection Process which conducts tests of transactions to include statistical reporting. In the past the Inspection Division has identified shortcomings by entities reporting statistical accomplishments.

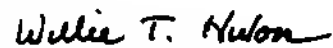
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5. Ensure that terrorism-related statistics are not reported unless evidence is maintained to support the statistics.

This is a basic premise of statistical reporting, with which the FBI fully agrees. Consistent with the improved controls as described above, the FBI will not report statistics which can not be supported.

Sincerely,

A handwritten signature in black ink that reads "Willie T. Hulon". The signature is written in a cursive, slightly slanted style.

Willie T. Hulon  
Executive Assistant Director  
National Security Branch

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### EOUSA RESPONSE



U.S. Department of Justice

Executive Office for United States Attorneys  
Office of the Director

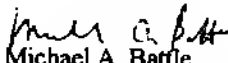
Main Justice Building, Room 2261  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

(202) 514-2121

#### MEMORANDUM

DATE: January 17, 2007

TO: Guy K. Zimmerman  
Assistant Inspector General for Audit

FROM:   
Michael A. Battle  
Director  
Executive Office for United States Attorneys

SUBJECT: Response to OIG Report on Terrorism Statistics

This memorandum is submitted by the Executive Office for United States Attorneys (EOUSA) in response to the audit report by the Office of Inspector General (OIG) entitled, "The Department of Justice's Internal Controls over Terrorism Reporting."

EOUSA appreciates the effort that the OIG put into this review and the courtesies extended by the OIG staff during the course of the review. We acknowledge that the report has raised important issues regarding what constitutes an "anti-terrorism case." EOUSA respectfully objects, however, to the report's general depiction of EOUSA's terrorism statistics as "inaccurate" or "unsupported." OIG's findings rest largely on its new interpretation of EOUSA's anti-terrorism coding definition, not on a finding that data were carelessly or perfunctorily recorded. Apart from the definitional issue, EOUSA also has concerns about the methodology of the report and some of the factual assertions arising therefrom.

EOUSA fully agrees with OIG that EOUSA must provide the clearest possible statistical picture of the important terrorism and anti-terrorism work being done by the United States Attorneys' Offices around the country. Toward that end, EOUSA will rename its anti-terrorism program category code, and will modify and clarify its definition, in order to eliminate any misunderstanding regarding its meaning.<sup>1</sup> In addition, EOUSA will review its internal controls in order to determine what improvements can be made.

<sup>1</sup> In renaming and modifying its anti-terrorism code, EOUSA does not plan to create a program code solely for those defendants who have links to terrorist activity, but who are investigated and/or charged with non-terrorism charges. EOUSA sees significant problems with a program code devoted solely to such cases and defendants.



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### OIG's Finding That EOUSA's Statistics Are "Inaccurate" or "Unsupported" Is Based Primarily on OIG's New Interpretation of the Anti-Terrorism Program Category Code.

OIG interprets EOUSA's anti-terrorism program category code to require that defendants in anti-terrorism cases have an identifiable link to terrorist activity.<sup>2</sup> Neither EOUSA nor the United States Attorneys' Offices, the primary drafters and users of the anti-terrorism coding definition, have ever required such a link.

OIG's interpretation would essentially limit the anti-terrorism program code to cases charging non-terrorism crimes against defendants who have an identifiable link to terrorist activity. Such cases are currently included within the anti-terrorism case definition. But the definition was intended to capture a much broader group of proactive cases that have been affirmatively and intentionally brought to deter and prevent terrorism, particularly in areas of critical infrastructure vulnerability, regardless of whether the defendant has any links to terrorist activity.

OIG's interpretation is simply that – its interpretation. It is not the interpretation that the drafters intended or the users of the anti-terrorism code have employed.<sup>3</sup>

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<sup>2</sup> Program category codes are used to label cases so that they can be sorted and compiled by EOUSA for statistical purposes. EOUSA collects data on all criminal cases investigated and charged by each of the 94 United States Attorneys' Offices. Case data are entered from each individual United States Attorney's Office and are sent to a centralized database at EOUSA known as LIONS (Legal Information Office Network System).

<sup>3</sup> EOUSA introduced the anti-terrorism program category code in August 2002. The code, which was defined by EOUSA and the Criminal Division, was intended to create a label for those investigations and cases undertaken to disrupt or prevent terrorism, which was then and is now the Department's highest priority. The definition is as follows:

Any matter or case where the underlying purpose or object of the investigation is anti-terrorism related (domestic or international). This program category is meant to capture United States Attorney Office activity intended to prevent or disrupt potential or actual terrorist threats where the offense conduct is not obviously a federal crime of terrorism. To the extent evidence or information exists, in any form, reasonably relating the case to terrorism or the prevention of terrorism (domestic or international), the matter should be considered "anti-terrorism." For example, a case involving offenses such as immigration violations, document fraud, or drug trafficking, where the subject or target is reasonably linked to terrorist activity, should be considered an "anti-terrorism" matter or case. Similarly, a case of identity theft and document fraud where the defendant's motivation is to obtain access to and damage sensitive government facilities should be considered "anti-terrorism." [Underline in original.]

In drafting and employing the code, we have operated with the understanding that the definition includes cases that are brought to prevent and disrupt potential terrorist activity, whether or not the target or defendant is linked to terrorist activity. Given the emphasis

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More importantly, however, OIG seems not to grasp the fundamental purpose of an anti-terrorism case or the need for such a code. A properly coded anti-terrorism case is brought specifically to deter potential terrorism, particularly in areas of critical infrastructure vulnerability. The fact that the defendants who are ultimately prosecuted may not have ties to terrorist activity is irrelevant to the coding of the case. It is the deterrent effect of the prosecution on potential terrorists that justifies the anti-terrorism case label.

Following the September 11<sup>th</sup> attacks, it has become clear that airports, subway stations, and bus and train depots are vulnerable to terrorist activity. Other infrastructure weaknesses include an insufficiently secure visa and passport documentation system that has allowed easy access to this country by fraudulent means. Cases that are specifically brought in order to deter potential terrorist activity in these and other areas are properly coded as anti-terrorism, even if the defendant is not a terrorist or linked to terrorist activity.

Operation Tarmac, discussed on page 39 of the OIG report, is a good example of the type of initiative that should properly be coded as anti-terrorism. Operation Tarmac was an affirmative, national initiative in which the FBI and other investigative agencies reviewed employment documentation and alienage status of airport employees at regional airports across the country. Most criminal cases resulting from Operation Tarmac and other similar initiatives have resulted in prosecutions for immigration violations and identity theft, and the vast majority of these defendants had no ties to terrorist activity. Yet hundreds of these cases were brought around the country specifically to deter potential terrorists from infiltrating regional airports.

OIG's exclusion of Operation-Tarmac-type cases from EOUSA's anti-terrorism code takes no account of their valuable deterrent effect. This exclusion is particularly ironic because in January 2003, the GAO issued a report—GAO-03-266—that reviewed EOUSA's terrorism statistics and confirmed that Operation-Tarmac-type cases were properly coded as anti-terrorism cases. In its report, the GAO criticized EOUSA for having too many cases coded as outright

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(underlining) on the first sentence, it is fair to say that the focus of the coding decision is on the purpose of the investigation or case, not on the target or defendant. The definition nowhere states that a defendant must have links to terrorist activity.

OIG's interpretation focuses on the examples rather than the general rule. Although the examples do discuss the nature or motivation of the defendant, the examples are merely that, permissible examples. They do not supersede, in our view, the general rule stated in the first three sentences, particularly where the rule itself explicitly states that it is intended to capture conduct that is not obviously a federal crime of terrorism.

Interestingly, the OIG report does state that "*a case or defendant must have some identifiable link to terrorism to be categorized as an 'anti-terrorism' case.*" Report at 38, italics added. EOUSA could agree with that statement were it intended to include the deterrent purpose for which a case is brought. But it is clear that OIG did not accept cases "*where the investigation showed that the subject or target had no link at all to terrorist activity,*" regardless of the deterrent purpose of the case. Report at 39, italics added.

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terrorism when they should be coded as anti-terrorism cases because they “did not result in terrorism-related convictions.” GAO Report, 03-266, at 13. The report then stated:

EOUSA policy guidance described antiterrorism conviction cases as those resulting from efforts on the part of DOJ to prevent or disrupt a potential or actual terrorist threat even where the offense is not obviously a federal crime of terrorism that would be coded under one of EOUSA’s terrorism-related classification codes. *For example, the conviction of a defendant arrested and subsequently convicted for identity fraud during a sweep of an airport, as part of a DOJ effort to prevent or disrupt terrorist activity, would be counted as an antiterrorism conviction.*

GAO Report, 03-266, page 13, note 19. Italics added.

Thus, when it had the opportunity as part of its review, GAO chose to confirm, rather than dispute, EOUSA’s interpretation of its anti-terrorism code. OIG’s interpretation of the anti-terrorism code therefore differs not only from EOUSA’s and that of the USAOs, but with the GAO’s interpretation as well.

Notwithstanding, in an effort to ensure greater clarity about the purpose and scope of the anti-terrorism category code, EOUSA shall rename the code and will, after a prompt but thorough internal discussion of the issue, modify the definition to make it more transparent.

OIG deems EOUSA’s statistics “inaccurate” in large measure because they exclude Operation Tarmac cases, and cases from similar initiatives around the country, from the anti-terrorism definition. If such cases were included in OIG’s interpretation, EOUSA expects that its statistics would otherwise be deemed substantially accurate. EOUSA’s follow-up work in response to OIG’s initial draft confirms this.

Upon receipt of OIG’s initial draft of this report, EOUSA asked for and received, in August 2006, a list of all cases that OIG considered inaccurate or unsupported. In the three weeks that OIG allotted for this follow-up effort, EOUSA went back to the eight USAOs from which the cases originated and asked them to identify whether any of those cases, (1) were referred by the JTTF; (2) were undertaken as part of an affirmative, proactive operation or initiative, consistent with a pre-existing, planned strategy in the district to deter or prevent terrorism; or (3) had defendants who had classified links to terrorist activity.

EOUSA inquired about these three criteria because if any of them exist, EOUSA would consider the case to be properly coded as an anti-terrorism case. First, a case brought by FBI’s Joint Terrorism Task Force, regardless of whether the defendant has verifiable links to terrorist activity, is going to be, by definition, part of a proactive effort to prevent terrorism because that is what the JTTF does.<sup>4</sup> Second, even if the JTTF is not involved, but the case is legitimately

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<sup>4</sup> There are more than 100 FBI Joint Terrorism Task Forces (JTTFs) across the nation, including at least one in each of the FBI’s 56 field offices. Sixty-five JTTFs were created after September 11, 2001. The JTTFs include FBI special agents, other federal agents, and state and local law

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part of a national or district-wide, pre-existing strategy to prevent terrorism, the case should be coded as an anti-terrorism case. Third, because the OIG had said it did not plan to review any classified information, EOUSA wanted to be sure that any such classified links were at least identified.

The results showed that overall, 81 percent of the cases that OIG considered unsupported or inaccurate met at least one of these three criteria. Once these cases are considered to be accurately coded, even assuming that all the remaining cases are inaccurately coded, then the overall number of supported cases for most statistics would be well over 90 percent, a level that OIG considers to be within normal statistical limits.

EOUSA's analysis covered not only the cases that were coded as anti-terrorism, but the majority of "terrorism-related" cases found in statistic number 3 as well. The "terrorism-related" cases in statistic 3 are comprised of a majority of anti-terrorism cases as well as a smaller number of terrorism hoaxes and terrorism financing cases, each of which have their own separate program category code.<sup>5</sup>

Finally, the OIG report expresses concern that EOUSA's definition of its anti-terrorism code would "permit[] criminal cases arising from virtually any federal law enforcement effort, including immigration violations or border enforcement activities, to be categorized as anti-terrorism regardless of the actual circumstances." Report at xiii; *see also* Report at 38-39. OIG's fear is unfounded. First, this has not occurred and the OIG report does not show or purport to show that such a thing has occurred. Indeed, in FY 2002, the year the anti-terrorism

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enforcement officers. The JTTFs have a two-fold mission: to prevent terrorist attacks before they occur and to mount an immediate investigative response when an act of terrorism has occurred. The prevention phase involves collecting, analyzing, and utilizing intelligence gathered on groups or individuals whose presence may threaten U.S. persons or interests, to prevent a terrorist act from occurring.

<sup>5</sup> The interpretation of the anti-terrorism definition does not affect statistic numbers 2 and 7, which relate only to terrorism convictions and terrorism trials, respectively. EOUSA agrees that the defendants in any terrorism-coded case must absolutely have an identifiable link to terrorist activity. Our review of the terrorism cases in statistic 2 showed that a number of these convictions were coded as terrorism cases when they could have been coded as anti-terrorism. We note, however, that the overstatement in statistic 2 is much less than it is for any of the other statistics, and is a deviation just over 10 %. For statistic number 7, terrorism trials occurring in FY 2001, we note that the total sample there was four terrorism trials, and there was a failure to report one of the four. Such an error is a simple one-time reporting error, resulting in an under-reported, not over-reported, statistic.

Certain other anti-terrorism statistics that were generated in FY 2002, numbers 1a, 5, and 6, were also under-reported because, as explained in the OIG report, the anti-terrorism code was introduced one month prior to the close of the fiscal year, and despite EOUSA's request to the USAOs to re-code cases by the close of the fiscal year, that effort took longer than one month and the updated responses could not be included in the year-end data that went into the Annual Report.

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code was introduced, immigration case filings totaled 13,676. The very next year, FY 2003, immigration case filings jumped to 16,621, a 21 percent increase. Last year, in FY 2006, immigration filings were up to 17,686. Thus, immigration case filings have not been converted into anti-terrorism cases, but have continued to be coded separately.

Second, EOUSA has previously made clear to the OIG in writing its position that "a properly coded anti-terrorism case [must] be part of a proactive initiative or operation that is driven by a pre-existing strategy or goal which is reasonably designed to prevent or disrupt terrorism. Reactive, or arrest-generated cases in such areas as immigration or document fraud are not generally going to be coded as anti-terrorism cases." EOUSA Memo to OIG, September 2006, at 7-8. Thus, a typical border/immigration case, that is, a reactive, arrest generated case arising from the arrest of an illegal alien who has illegally entered or re-entered the country, has not been and will not be, without more, coded as an anti-terrorism case. Rather, a case arising from a planned investigative effort designed specifically to deter potential terrorist activity at areas of critical infrastructure vulnerability would be coded as anti-terrorism, even if the resulting cases were brought against defendants who did not have links to terrorist activity.<sup>9</sup>

### Methodology Concerns

EOUSA found certain aspects of the methodology used in the OIG review to be inscrutable. First, regardless of the definitional issue discussed above, we believe that the OIG report is inaccurate, or at best misleading, when it states that "EOUSA and the USAOs could not accurately support the 11 EOUSA and USAO statistics we reviewed." Report at ix. By the Report's own admission, that is untrue. The chart on pages x and xi show that, for three of the eleven statistics (#5, 6, and 7), and four of the nineteen subcategories (adding #1.a.), the "number supported" exceeded the number reported. In other words, EOUSA was under-reporting. Under-reporting does not mean that the statistics were "not accurately supported." There was, in fact, support for each statistic reported. Thus, even apart from the pivotal issue of the proper interpretation of the anti-terrorism definition, at a minimum, only eight of EOUSA's eleven statistics should be portrayed as "unsupported."

Second, as described above, the primary issue in the report turns on OIG's new interpretation that the defendant in an anti-terrorism case must have a link to terrorist activity in order for the case to be properly coded. Yet nowhere does the report identify the criteria by which OIG judges whether such a link to terrorism exists. The report appears to be based on OIG's subjective views as to whether an appropriate terrorism link exists.

The report states that OIG "looked for and accepted any evidence of a reasonable terrorism linkage." Report at 39; *see also* Report at xiii. Yet the report fails to accept that an investigation or case referred by the JTTF must, by definition, involve either terrorist activity or

<sup>9</sup> We note that the report mistakenly asserts on page 39 that an EOUSA official told OIG that "EOUSA could also properly code as anti-terrorism all cases arising from any illegal immigrants arrested crossing the southwest border into the United States, but have not done so." As discussed above, that is not, and never has been, EOUSA's position. OIG apparently misunderstood the remark, which was intended to convey exactly the opposite of what OIG has reported.

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the prevention of terrorist activity. The JTTF's mission is to prevent terrorist attacks before they occur and to investigate actual acts of terrorism. Indeed, the report concedes that the "JTTFs' focus originate[s] in concerns regarding terrorism" (Report at xii). But why a case referral from the JTTF is not by itself sufficient to code a matter or case as anti-terrorism is never explained.

The report also notes that it sought to "test the extent to which JTTF-referred cases consistently had a link to terrorism" by requesting additional documentation on 21 JTTF-referred cases. Report at 38. OIG determined that 13 of the 21 sample cases did not have an appropriate link to terrorism, but the basis on which this judgment was made was not identified.

Third, OIG reports that for a small percentage of cases in statistics 1, 2, 3, 4, 8, 9, and 10, the USAOs either erroneously reported certain statistical measures or "could not provide documentation" to support the reported data. But OIG did not discuss or share with EOUSA the actual case documentation it received from the USAOs that OIG used to support such findings. Thus, these findings are not subject to transparent review.

For instance, the report asserts in statistic number 1 that "either [certain] cases were not filed in the year reported or the USAOs could not provide documentation to show the cases were filed in the year reported." Report at 46. The report does not identify which basis is relied upon for which case, and EOUSA is not confident that either assertion is factually accurate. On one hand, the assertion implies that the USAOs did not have a copy of the charging document in every case examined. But to the extent OIG did not obtain a copy of the charging document for each case, we believe such a failure must result from a lack of communication with the USAOs, not because the USAOs do not have a copy of this most critical, public document, which is necessary for any prosecution to go forward.

On the other hand, to the extent that OIG compared the "case date" field in LIONS with original documents evidencing the actual date that a charging instrument was filed in court, it would not be uncommon for the two dates to differ, and that difference should not be used to assert that a case or data entry was inaccurate or unsupported. This is because the LIONS "case date" field shows when the data was entered into the LIONS database, *i.e.*, the date that the docketer literally sat down at the computer and entered the data. A separate data field shows the actual date that the indictment or other charging instrument was filed in court. We are unaware if OIG was aware of this difference, and we are unaware of any discrepancy between the true date the case was filed in court and such data in LIONS.<sup>7</sup>

Similarly, we note that there are appropriate and understandable differences in the LIONS data between the "disposition date" and the "sentencing date," but that it was not clear

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<sup>7</sup> In order to report data on an annual basis, EOUSA protocol requires that case data be cut off at the temporal close of the fiscal year. Data that is entered after the close of the fiscal year that relates to events that occurred in the previous fiscal year, such as the actual filing of charges in court, are not included as part of the previous fiscal year's data. This is the standard used in most annual data systems. Were it otherwise, there would be no finality to annual "year end" data. A USAO could always go back and change the previously compiled totals for a prior fiscal year. That is why the "case date" field is used when providing annual data.

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which date OIG used to compare against the actual date of the sentencing. In short, again, further communication between OIG and the USAOs or EOUSA, as well as a review by EOUSA of the actual case data that OIG relied upon, could have resolved these issues.

Finally, although much of EOUSA's section of the report is comprised of narrative discussions of individual cases, OIG has never identified the particular cases that go with each narrative discussion. Thus, it is impossible to reply to the cited examples on a case-by-case basis.

### Recommendations

All of OIG's recommendations below outline important and necessary controls for the accurate reporting of terrorism statistics. However, EOUSA believes that it has been and is now in compliance with most of the recommendations. As described above, the thrust of OIG's report as to EOUSA turns on the definition of the anti-terrorism code. It is not clear to EOUSA how tighter controls on reporting procedures would have changed the coding of the anti-terrorism statistics that OIG believes are miscoded. With that in mind, EOUSA responds to the recommendations below as follows:

1. *Establish and document internal control procedures for gathering, verifying, and reporting terrorism-related statistics.*

EOUSA agrees with this recommendation but believes that it is already complying with it. As noted in the report, United States Attorneys are already required to certify twice yearly that the LIONS data in their district is correct. There are a variety of tools available to ensure that the LIONS data is correct. Primary among them is the United States Attorneys' Procedure (USAP) 3-16.130.001, which was updated most recently in September, 2006. This USAP requires each United States Attorney to certify twice a year, on April 1 and October 1, that the LIONS data entered by that office is complete and accurate. The procedure applies to all USAO employees who have responsibilities for case coding and data entry, including docket personnel, system managers, secretaries and line attorneys and their supervisors. The procedures also include the "case certification by events" tool, the Alcatraz Case Certification report, the AUSA workload reports, and the Alternate District Reporting Method.<sup>8</sup> Although OIG asserts that these controls are insufficient (Report at 36), it was not a failure of these controls that caused the vast majority of the anti-terrorism statistics to be miscoded. Rather, as discussed above, that was primarily caused by a difference of opinion over how to interpret the anti-terrorism code. EOUSA will, however, within the next three months review these controls to determine if there are improvements that can be made.

2. *Maintain documentation to identify the source of all terrorism-related statistics reported in official operational documents such as budget requests, performance plans, statistical reports, and others.*

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<sup>8</sup> USAOs are also provided with a 637 page LIONS User's Manual that outlines in detail the appropriate ways to enter data into the LIONS system.

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EOUSA already currently maintains documentation to identify the source of terrorism-related statistics. Please see the response to recommendation one above.

3. *Maintain documentation of the procedures and systems used to gather or track the statistics reported.*

EOUSA already currently maintains documentation of the procedures used to gather or track statistics. Please see the response to recommendation one above.

4. *Maintain documentation of the methodologies and procedures used to verify the accuracy of the statistics reported.*

EOUSA already currently maintains documentation of the methodologies and procedures used to verify statistical accuracy. Please see the response to recommendation one above.

5. *Ensure that terrorism-related statistics are not reported unless evidence is maintained to support the statistics.*

This is a basic premise of any statistical reporting, and EOUSA fully agrees with it. Please see the response to recommendation one above.

6. *Establish and implement procedures to recode transactions in the LIONS system when investigations that began as terrorism-related investigations do not link the case defendants to terrorist activity.*

EOUSA agrees that if the basic character of a given case changes over the course of its investigation and/or prosecution, and if it would be inaccurate to report the case under the code it was originally reported under, then the case should be recoded. However, EOUSA does not see such situations arising very often. A defendant who once had links to terrorist activity will always have or have had those links. Also, EOUSA would need to receive from the USAOs a notice of change of code at some point prior to the close of the fiscal year in which the case was finally terminated, since at that point the statistical recording of the case is finalized.

The question is what to do with cases where the defendant never had links to terrorism. As indicated above, prior to this report, EOUSA and the USAOs were clear that such cases could properly be coded as anti-terrorism cases so long as the case was brought as part of a pre-existing operation, initiative or strategy legitimately intended to prevent terrorism in areas of infrastructure vulnerability, or was otherwise referred to the USAO by the JTTF. Given OIG's concern, however, EOUSA will modify and clarify its anti-terrorism code to eliminate any confusion as to its meaning. Further, because certain anti-terrorism statistics are included in



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Department budget requests,<sup>9</sup> EOUSA will work with all necessary Department components to ensure that any reporting of anti-terrorism statistics is labeled in as clear a manner as possible.

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<sup>9</sup> Statistics for the number of terrorism and anti-terrorism defendants charged, the number of terrorism and terrorism-related convictions obtained, and the number of terrorism and anti-terrorism defendants sentenced, have been included in recent Department budget requests since FY 2004.

CRIMINAL DIVISION RESPONSE



U.S. Department of Justice

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Washington, D.C. 20530

JAN 16 2007

Glenn Fine  
Inspector General  
U.S. Department of Justice  
Washington, DC 20530

Re: Response to the Office of the Inspector General's Report on the Department of Justice's Internal Controls over Terrorism Reporting in Regard to Statistics  
Maintained by the Criminal Division

Dear Mr. Fine:

Thank you for the opportunity to provide comments on the Office of the Inspector General ("OIG") Report on the Department of Justice's Internal Controls over Terrorism Reporting ("the Report"). We share your interest in ensuring that the Department accurately accounts and reports its investigations and casework related to terrorism and terrorist threats.

Here, we address only that portion of the Report that discusses statistics maintained by the Criminal Division.<sup>1</sup> We do not address issues or recommendations directed to the Executive Office of United States Attorneys or to the Federal Bureau of Investigation.

**1. The Criminal Division Had Documentation To Support Its Reporting.**

We agree with the Report's conclusion (at 73) that "[t]he Criminal Division provided documentation to support that all the transactions tested were terrorism-related." The chart on pages xv and 75 similarly shows that eight of nine reported subcategories of statistics were fully "[s]upported." The Criminal Division provided supporting documentation that matched or, in some instances, exceeded the number of incidents reported. In other words, according to the Report, the Criminal Division either accurately stated or understated the number of terrorism-related defendants, cases, or matters in all but one subcategory (namely, 5.a.). For that one

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<sup>1</sup> We note that the Criminal Division statistics, which were originally maintained by the Office of the Assistant Attorney General of the Criminal Division and subsequently transferred to the Counterterrorism Section, have been maintained by the National Security Division since September 28, 2006, when the Division was established and incorporated the Counterterrorism Section.

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subcategory, the shortfall in documentation was “minor” according to the Report itself (page 81); the Criminal Division reported there were over 50 “material support to terrorism cases and matters participated in or coordinated as of 1-31-03,” but provided documentation for 49. As the chart reflects, all of the other statistics in that category – “material support to terrorism cases and matters” – were fully supported.

Given these facts, we respectfully disagree with the conclusions found elsewhere in the Report that the Criminal Division’s statistics were “unsupported.” For instance, on page v, the chart says that the number of Criminal Division statistics “[n]ot [s]upported” was “5 of 5.” That is directly contradicted, however, ten pages later in the Report on page xv, and again on page 75. The “total[]” number of “not supported” statistics (at iv and v) is also incorrect, as a result. Assuming that the Report’s characterization of the EOUSA and FBI statistics is correct, the total number of unsupported statistics among all three components is at most 19 of 26.

Likewise, in summarizing the Report’s conclusions, the OIG writes, “[i]n general, we found that the Department components . . . could not support . . . its terrorism-related statistics.” (at xvii). *See also* at 83 (“[T]he Department and its components could not support . . . terrorism-related statistics accurately.”) Although we understand the desire to generalize, we believe the Report’s attempt to do so creates a misimpression in this case because again, by the Report’s own admission, the Criminal Division fully supported its statistics in all but one of nine subcategories of statistics.

### **2. The Criminal Division Underreported Some of Its Terrorism-Related Statistics**

We do not dispute the Report’s conclusion that the Criminal Division inaccurately *understated* six of the nine subcategories of reported statistics. (See pp. xv and 75). As noted above, there was a “minor” overstatement with respect to one subcategory (5.a.), and the remaining two subcategories were reported accurately (3.a. and 5.b.).

Although, as the Report recognizes, two of six understatements were only “minor” (at 76 and 82), we agree that improvements in the collection and reporting of statistics are needed to help prevent understatements in the future. The Report concluded that certain subcategories of statistics were understated “primarily because the database used to track the statistics was incomplete and not kept up-to-date” (at xv). That should not occur, and we fully agree that better internal controls and procedures are warranted. As discussed in greater detail below, we have already taken steps to institute these improvements.

Given the Report’s findings on understatements and the apparent cause for those understatements (namely, that the relevant database was not always updated when new terrorism matters arose), we respectfully, but emphatically, disagree with the Report’s conclusion (at xvii and 83) that the Division “could easily and unintentionally misreport in the opposite direction” to overstate terrorism statistics. That is not correct, and the Report provides no support for this troubling conclusion.

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We do not believe, given our system, that the Division could unintentionally report a terrorism-related matter that had no basis in fact. Each matter is documented extensively. As we explained to the OIG audit team, the Counterterrorism Section coordinates extensively with the United States Attorneys' Offices on terrorism-related matters, in accordance with a January 2005 directive from the Deputy Attorney General and as recently incorporated into the United States Attorney's Manual. This coordination includes specific notification, consultation, and approval requirements that obligate the United States Attorneys' Offices to apprise and discuss with the Counterterrorism Section specific actions and milestones with respect to terrorism investigations and prosecutions. For each approval requirement, the Counterterrorism Section prepares a written memorandum to the Office of the Assistant Attorney General that analyzes the requested action and provides a recommendation. Copies of these memoranda are maintained in the files of the Counterterrorism Section and serve as record of decisions and a source of information on terrorism matters. Much of this coordination is accomplished through the Anti-Terrorism Advisory Council Coordinators in each U.S. Attorney's Office and their counterparts in the Counterterrorism Section, the National Anti-Terrorism Advisory Council Coordinator and the Regional Coordinators. These individuals form a nationwide network which provides, among other things, a mechanism for exchanging and transmitting information on terrorism cases and investigations. Through this network, the Counterterrorism Section obtains current reporting on a daily basis of significant litigation events in terrorism cases. This information is reported to Department officials and circulated back out to prosecutors in the field through a Daily Report, which serves as another repository of information that forms the basis for our terrorism statistics. In addition, for cases in which a Counterterrorism Section prosecutor is involved, a record is opened in the Criminal Division's Automated Case Tracking System (ACTS), which serves as another data source. This is supplemented by more detailed case summaries maintained by the Counterterrorism Section which consist of more detailed case profiles on specific significant terrorism cases. The Counterterrorism Section also established procedures relative to the international terrorism and terrorism-related cases database when it assumed responsibility for this function from the Office of the Assistant Attorney General for the Criminal Division. These procedures are set forth in a Circular dated January 6, 2006, and revised on August 8, 2006, copies of which were supplied to the OIG.

Documentation of this kind must exist – and the Report found did exist – for each of the reported statistics. While it is true that there were particular terrorism-related matters that were documented but went unreported, it does not follow as a matter of logic or fact that the converse is therefore also true – that a terrorism-related matter could be reported unintentionally but neither exist nor have documentation. We urge the OIG to delete this unsupported finding.

We also take issue with the OIG's conclusion (at 83) that "The extensive efforts required by the Criminal Division to reconstruct reported statistics demonstrates that the Division had no effective reporting system. . . ." See also Report at xvii ("the Division had no accurate basis for its reported numbers"). While we concede that the reported statistics have not been maintained according to audit standards and the supporting documentation was therefore not readily available, the fact that this data could be successfully reconstructed actually demonstrated that

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there were systems in place, and that these systems could effectively provide the basis for the Division's reported numbers.

### 3. The OIG Should Correct Its Inaccurate and Potentially Misleading Statements

The Report contains other imprecise or inaccurate statements that we urge the OIG to consider revising, in particular,

- Repeated statements that the Criminal Division statistics were "inaccurate" and "flawed" (at xv, xvi, xvii, 71, 72, 74, 76, 79, 83), will likely lead readers to infer that the statistics were inflated. That, of course, would be incorrect. Eight of the nine reported statistics were either accurate or understated. The one overstatement was, according to the Report, "minor."
- In an attempt to summarize the Department's shortcomings in its terrorism reporting, the Report lumps all the statistics from FBI, EOUSA, and Criminal Division together and makes the broad statement (at v and 13) that the statistics could not be supported for three reasons: the components (1) could not provide support for the numbers reported for the statistics; (2) could not substantiate the terrorism link; and (3) could not provide documentation of the time period represented. When questioned about the application of these generalizations to the Criminal Division, the OIG conceded that (2) did not apply to the Criminal Division but claimed that (1) and (3) applied at the outset of the audit. Thus the OIG refused to alter this erroneous statement. Yet, elsewhere in the Report the OIG clearly found that none of these applies to the Criminal Division. To the contrary, the OIG found at the conclusion of the audit that the Criminal Division provided documentation that the numbers reported were supported and, in fact, support was provided to show that the Division understated the numbers reported. Report at 72. Further, the OIG found that the Criminal Division established a link to terrorism in all cases that the OIG tested. Report at 73. And, the OIG's final reconciliation established that the Criminal Division documented the time period represented with one minor variance. Report at 75. Thus these reasons are almost entirely inapplicable to the Criminal Division: the Division was able to provide support for all cases it reported; the Division supported a terrorism link in all cases; and the Division provided documentation as to the appropriate time period for all but 2 out of nearly 400 reported cases.
- The Report makes much of the fact that the Criminal Division twice produced documentation to support the reported statistics – once in March 2006 and once in August 2006. As you know, the Criminal Division needed a second effort to document the statistics because the documentation to support the statistics had to be reconstructed from a variety of sources; it was not readily available, as it admittedly should have been. That said, the August 2006 reconciled

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documentation is entirely valid. No one has suggested otherwise, and it is unfortunate that the Report emphasizes the interim documentation and reconciliation. In addition, the Report tells only half the story of the reconciliation process. If the OIG believes it is necessary to account for each step in reconstructing the data, the Report should state that the Counterterrorism Section was fully engaged in working through this reconciliation process with the OIG, pointing out to the OIG staff when the OIG double counted certain cases, when they failed to count cases of a continuing nature because a single milestone in the case had been reached, and when they confused a case and a matter. A full understanding of the audit and reconciliation process must credit the efforts by the Counterterrorism Section to supply the OIG with all the materials they requested and educate them on each criminal investigation and prosecution so that they could properly evaluate those materials in the context of the audit.

We urge the OIG to correct these deficiencies in the Report.

### 4. Recommendations

We agree that improved controls will improve our ability to readily substantiate the statistics reported. As we discuss in greater detail below, these improved controls are now in place. Consequently, we believe the Department has satisfied the recommendations in the report in regard to the Criminal Division statistics and that no further action in this regard is required.

#### **Recommendation 1. Establish and document internal control procedures for gathering, verifying, and reporting terrorism-related statistics.**

**Response:** The Counterterrorism Section concurs with this recommendation, subject to the following comments. As discussed above, the Criminal Division had existing procedures for gathering, verifying and reporting terrorism-related statistics which it discussed with the OIG auditors, even though this information is largely absent from the Report. These procedures were set forth, in part, in a Counterterrorism Section (CTS) Circular on Terrorism Statistics and in material discussing specific Performance Measures, which was provided to the OIG. These mechanisms were supplemented by gathering information through telephone and email requests and responses to and from terrorism prosecutors in U.S. Attorneys' Offices around the country through the communication network established by the Anti-Terrorism Advisory Council Coordinators in the field and the National and Regional Coordinators in the Counterterrorism Section. We believe there was nothing haphazard about this system, which resulted in daily reporting of terrorism litigation events in the CTS Daily Report, a fundamental mechanism by which Department leadership is kept current on such matters.

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Nevertheless, we have made improvements to these reporting mechanisms that have resulted in more accurate and up-to-date statistics. We have revised both our Circular on Terrorism Statistics and our Performance Measures. A copy of the revised Circular was previously provided to the OIG, and we are transmitting a copy of the revised Performance Measures by separate cover.

**Recommendation 2. Maintain documentation to identify the source of all terrorism-related statistics reported in official operational documents such as budget requests, performance plans, statistical reports, and others.**

**Response:** The Counterterrorism Section concurs with this recommendation and intends to maintain documentation in a more readily available manner to identify the source of the statistics it reports.

**Recommendation 3. Maintain documentation of the procedures and systems used to gather or track the statistics reported.**

**Response:** The Counterterrorism Section concurs with this recommendation and intends to maintain such documentation.

**Recommendation 4. Maintain documentation of the methodologies and procedures used to verify the accuracy of the statistics reported.**

**Response:** The Counterterrorism Section concurs with this recommendation. It will rely primarily on the methodologies and procedures set forth in the recently updated Circular on Terrorism Statistics which has been supplied to the OIG. The additional systems described above will serve as back-up for the international terrorism and terrorism-related cases database.

**Recommendation 5. Ensure that terrorism-related statistics are not reported unless evidence is maintained to support the statistics.**

**Response:** The Counterterrorism Section agrees that terrorism-related statistics should not be reported unless evidence is maintained to support the statistics.

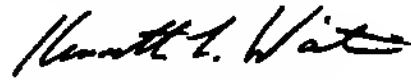
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Thank you again for the opportunity to provide comments to the Report.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Fisher', with a long horizontal stroke extending to the right.

Alice S. Fisher  
Assistant Attorney General  
Criminal Division

A handwritten signature in black ink, appearing to read 'Kenneth L. Wainstein', with a long horizontal stroke extending to the right.

Kenneth L. Wainstein  
Assistant Attorney General  
National Security Division



## **APPENDIX IV**

### **OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT**

We provided the draft report to the FBI, EOUSA, and the Criminal Division for their comments, which are included in Appendix III. Our analysis of each component's response is provided in Sections A through C of this appendix. In Section D of this appendix, we summarize the status of each recommendation and discuss the actions necessary to close the recommendation.

#### **A. FBI Response**

The FBI concurred generally but not entirely with our findings, and it agreed with all of our recommendations.

The FBI stated that it agreed fully with the OIG that it must collect and maintain accurate statistics. The FBI's response then discussed its reorganization and restructuring since the September 11, 2001, terrorist attacks. It stated that many of the apparent weaknesses in statistical reporting occurred during this period and were an outgrowth of the FBI's reorganization and restructuring. The FBI also provided an extensive discussion of new procedures it is implementing to ensure the accuracy of its reporting of terrorism-related convictions. We believe that, if fully implemented and followed, the FBI's procedures can help improve the accuracy of its future statistics.

However, the FBI objected to certain aspects of our findings. In its discussion of the number of terrorism-related statistics, the FBI stated that it agreed that while a case must have a terrorism nexus to be properly coded as terrorism-related, the ultimate charge or conviction need not be for a terrorism offense to properly be included as a terrorism statistic.

We agree with that point and in our report stated that cases could have a terrorism link and be properly counted as a terrorism conviction even if the ultimate charge was not for a terrorism offense. As we note on page 19 of the report, we counted convictions as being terrorism-related as long as the FBI provided to us any evidence that the case had a terrorism link, regardless of the ultimate charge.

However, for many cases the FBI could not provide us with any such evidence of a link to terrorism. For example, pages 18-19 of the report provide examples of four cases included in the FBI's terrorism-related

convictions for which the FBI could not provide support for any link to terrorism.

The FBI's response also described the work of Joint Terrorism Task Forces (JTTFs) and asserted that all cases worked by a JTTF are "by their nature terrorism related." The FBI stated that it therefore disagrees that it should "recode investigations that the JTTFs handle based on the type of criminal charges filed at the conclusion of the case."

The FBI misconstrues our finding. We do not believe that the case should be recoded based solely on the ultimate criminal charge, and we recognize that cases that have a link to terrorism might not result in terrorism charges. On the other hand, cases that the JTTFs pursue, based on an initial lead, might ultimately find no link to terrorism even if the JTTF finds other criminal conduct during the course of its investigation. For example, the JTTF may investigate a terrorism lead and subsequently clear the defendant of any connection to terrorism, but the JTTF might uncover evidence that the defendant committed some unrelated criminal conduct such as marriage fraud. Contrary to the implication of the FBI's argument, the resulting conviction should not be considered a terrorism-related conviction solely because the JTTF handled the case.

We agree with the FBI that, after weighing the alternatives, a false statement or immigration case may present the best outcome to disrupt a terrorist plot rather than pursuing strict terrorism-related charges. But the FBI should be able to demonstrate a terrorism link in the cases it lists as "terrorism-related convictions," regardless of whether the JTTF worked the case. In short, just because the case was worked by a JTTF does not mean that all its convictions necessarily contain a link to terrorism.<sup>63</sup>

In its response, the FBI also stated that it had reviewed the 65 convictions we identified in the report as not having a demonstrated link to terrorism and agreed that 30 of the convictions were improperly reported. However, the FBI stated that it believes the remaining 35 cases were properly coded as terrorism-related. While the FBI did not provide sufficient detail in its response for us to reconcile its analysis of the 35 cases to our audit work, it appears that 29 of the 35 cases pertain to narcotics convictions of white supremacist gang members. The FBI stated that these investigations "focused on fully identifying and disrupting the members of this organization whose declared mission was to train and prepare for future violent race conflicts." We are aware the FBI considers that domestic

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<sup>63</sup> This issue is also discussed in the section of our analysis examining EOUSA's comments.

terrorism groups can include white supremacists, black separatists, animal rights/environmental extremists, anarchists, anti-abortion extremists, militias, and other anti-government extremists. While we agree that these groups can engage in terrorism, we also believe that these groups can engage in criminal activities such as drug trafficking that are unrelated to terrorism.

When reviewing files of FBI cases it listed as terrorism convictions, we looked for any demonstrated link to terrorism and did not consider membership in a white supremacist group alone sufficient to establish such a link. As with the JTTF cases, we believe the FBI should be able to demonstrate a terrorism link in such cases, and if it cannot point to any evidence to indicate that such a link exists, the FBI should not code the case as terrorism-related.

In addition, according to the FBI's response, 2 of the 35 disputed cases involved threats to the public and were appropriately counted as domestic terrorism cases. One of the cases involved an individual who sent a federal judge letters that stated they were contaminated with Anthrax. Contrary to the FBI's belief, we considered this case to have a terrorism link and did not question how it was coded. However, the other case involved an individual who telephoned local police and reported that 30 vials of Yersinia Pestis bacteria, the infectious agent of bubonic plague, could not be located. When the FBI questioned the individual, he admitted that he had accidentally destroyed the vials and made up the story in an effort to account for the vials. Because the case agent could provide no evidence that this incident was linked to terrorism, we do not believe it was properly reported as a terrorism-related conviction.

The FBI's response did not provide an explanation for the remaining four cases disputed by the OIG as having a link to terrorism.

In the remaining sections of its response, the FBI acknowledged other inaccurate FBI statistics but described how it had strengthened controls relating to the statistics.

The status of the recommendations related to FBI statistics is presented in Section D of this appendix.

## **B. EOUSA Response**

In its comments on the report, EOUSA agreed that the report raised important issues regarding what constitutes an "anti-terrorism case" and that EOUSA must provide the clearest possible statistical picture of the

terrorism and anti-terrorism work being done by United States Attorneys' Offices. Toward that end, EOUSA agreed to rename its anti-terrorism program category-code and "modify and clarify its definition, in order to eliminate any misunderstanding regarding its meaning." EOUSA also acknowledged that several of its statistics were inaccurate such as statistic 5 on defendants prosecuted in FY 2002, and statistic 6 on defendants found guilty in FY 2002, and it agreed to review its internal controls over terrorism statistics to determine what improvements can be made.

However, EOUSA objected to the OIG's findings regarding several of its terrorism statistics, and EOUSA also raised concerns regarding the methodologies we used in reaching our conclusions. We present below our analysis of EOUSA's comments.

EOUSA noted that the OIG interpreted EOUSA's anti-terrorism program category code definition to require that defendants in anti-terrorism cases have an identifiable link to terrorist activity. EOUSA claimed that the OIG's interpretation would not capture a "much broader group of proactive cases that have been affirmatively and intentionally brought to deter and prevent terrorism, particularly in the areas of critical infrastructure vulnerability, regardless of whether the defendant has any links to terrorist activity." In support of its argument, EOUSA pointed to Operation Tarmac cases, as well as all cases worked by JTTFs, as examples of anti-terrorism cases. It also argued that the OIG "deems EOUSA's statistics 'inaccurate' in large measure because they [the OIG] exclude Operation Tarmac cases, and cases from similar initiatives around the country, from the anti-terrorism definition."

First, as a factual matter EOUSA's argument is incorrect that its statistics were "in large measure" inaccurate because of the dispute over inclusion of cases like Operation Tarmac. After receiving EOUSA's response, we reviewed how many of the disputed cases in the anti-terrorism statistics related to Operation Tarmac or similar operations. In fact, we determined that even if such cases were counted as anti-terrorism cases, EOUSA's statistics would still be significantly inaccurate. We analyzed 9 of the 11 EOUSA statistics which were reported 16 times. Our analysis showed that, even giving credit for Operation Tarmac and similar cases, as well as all cases worked by JTTFs, 8 of the 9 EOUSA statistics remained significantly inaccurate. Only one changed from significantly overstated to overstated by a minor amount. For the 14 times the other 8 statistics were reported, the percentage error changed but it did not change the statistic from a significant error to a minor error. Thus, notwithstanding this disputed interpretation, EOUSA's statistics remained significantly inaccurate.

Second, we disagree with EOUSA's argument that all convictions in cases like Operation Tarmac were properly counted as anti-terrorism convictions given EOUSA's stated definition of the anti-terrorism program category. Moreover, we believe that if EOUSA wanted to count such cases it should have made its definitions and descriptions of the type of cases that it was counting as anti-terrorism case transparent. We believe that a fair reading of EOUSA's definition of the anti-terrorism program category would not indicate that such cases should be included.

EOUSA's definition of the anti-terrorism program category states that the category: (1) includes any matter or case where the underlying purpose or object of the investigation is anti-terrorism related, (2) is meant to capture activity intended to prevent or disrupt potential or actual terrorist threats where the offense conduct is not a federal crime of terrorism, and (3) includes any matter where evidence or information exists in any form reasonably relating the case to terrorism or the prevention of terrorism. The definition goes on to provide examples of cases that should be included under this category, such as immigration fraud, but also states that the subject or target must be "reasonably be linked to terrorist activity." Thus, in Operation Tarmac, which resulted in immigration charges, the definition suggest that the subjects must also reasonably be linked to terrorism. As EOUSA acknowledges, most of those subjects in Operation Tarmac cases were not. Moreover, none of EOUSA's anti-terrorism statistics reported to Congress in the President's budgets and in its statistical reports included an explanation of what EOUSA meant by "anti-terrorism" or whether the cases reported were actually linked to terrorist activity.

We recognize that efforts like Operation Tarmac may be intended to deter potential terrorists, as well as a wide range of other criminal activity. However, we believe that including all Operation Tarmac cases under its anti-terrorism category – without explanation – does not clearly provide full information to Congress and the public about EOUSA's statistics. Rather, simply suggesting that because "hundreds of these cases were brought around the country specifically to deter potential terrorists from infiltrating regional airports" does not, in our mind, justify labeling all these cases as "anti-terrorism" absent a more identifiable link to terrorist activity. Instead, EOUSA has an obligation to clearly articulate the types of cases it is including in these categories.

We also note that after making these arguments about our analysis of its statistics, EOUSA stated that "Notwithstanding, in an effort to ensure greater clarity about the purpose and scope of the anti-terrorism category code, EOUSA shall rename the code and will, after a prompt but thorough internal discussion of the issue, modify the definition to make it more

transparent.” We agree that this corrective action is needed, and we believe EOUSA’s intended action is appropriate and responsible.

Third, to support its argument that the OIG is mistaken in its position not to support inclusion of all Operation Tarmac-type cases as anti-terrorism cases, EOUSA cites a January 2003 report by the Government Accountability Office (GAO) that allegedly “reviewed EOUSA’s terrorism statistics and confirmed that Operation-Tarmac-type cases were properly coded as anti-terrorism cases.” EOUSA further claims that “OIG’s interpretation of the anti-terrorism code therefore differs not only from EOUSA’s and that of the USAOs, but with the GAO’s interpretation as well.”

In fact, the GAO report cited by EOUSA did not confirm that Operation Tarmac-type cases were properly coded as anti-terrorism cases. Rather, the GAO report concluded that the Department of Justice did not have sufficient management oversight and internal controls in place to ensure the accuracy and reliability of terrorism-related convictions.

However, upon receipt of EOUSA’s response, we contacted GAO managers regarding the report language quoted by EOUSA. The GAO managers stated that the GAO report should not be construed as an endorsement of EOUSA’s classification of such cases as “anti-terrorism.” GAO managers said their report neither confirmed that Operation-Tarmac-type cases were properly coded as anti-terrorism cases or endorsed EOUSA’s use of the anti-terrorism code.

Fourth, similar to the FBI’s response, EOUSA claims that any case investigated by a JTTF “regardless of whether the defendant has verifiable links to terrorist activity, is going to be, by definition, part of a proactive effort to prevent terrorism because that is what the JTTF does.” As noted in our response to the FBI’s comments, we disagree with this argument. An investigative lead may be pursued by the JTTF but the outcome of the investigation may clear the defendant of any connection to terrorism while finding other criminal activity. We believe it to be inaccurate to include all such convictions as anti-terrorism simply because a JTTF pursued the investigation rather than other investigators.

Fifth, EOUSA disputed “certain aspects of the methodology used in the OIG review,” and argued that it was inaccurate or misleading to report that EOUSA and USAO statistics were “unsupported” because some of the statistics were under-reported rather than over-reported. EOUSA stated that because 3 of the 11 statistics and 4 of the 19 subcategories were

understated rather than overstated, these statistics therefore were “supported.”

In our view, a statistic reported to Congress and to the public by the Department of Justice is unsupported if the Department cannot provide support for the accuracy of that number, regardless of whether it is under-reported or over-reported. However, in order to avoid a non-productive disagreement about the meaning of the word “supported” in this context, the OIG has decided to change the wording in the report to state that various statistics are “inaccurate” rather than “unsupported.” However, the OIG’s ultimate conclusion remains that in all 11 of the terrorism statistics we examined, EOUSA did not report its numbers accurately. Congress, Department managers, and the public need accurate terrorism statistics in order to assess the Department’s work, and Department statistics that are either under- or overstated are unacceptable.

Sixth, when discussing our methodology EOUSA made various arguments that the OIG did not identify the criteria used to question the reporting of certain statistics or that we did not provide sufficient details of the transactions questioned for EOUSA to determine if the transactions were accurately reported or not. For example, EOUSA stated that we did not identify in the report the criteria we used to judge whether cases reported as anti-terrorism cases were linked to terrorism. EOUSA is incorrect. The report explains that our judgment of whether such a terrorism link existed was based on whether or not the USAOs could provide any evidence that tied the subjects to terrorist activity. We accepted as evidence of a terrorism link virtually any written or verbally-provided indication of a terrorism connection. Although we asked for written documentation, in practice we accepted USAO and EOUSA officials’ verbal explanations of the terrorism links.

Moreover, after we provided the draft report to EOUSA and discussed the report with EOUSA officials at the audit closeout meeting, we provided EOUSA with comprehensive lists showing every case we questioned for each statistic we reviewed. The listings identified whether the case was questioned for lack of a link to terrorism, lack of documentation to show the case was reported in the proper period, or both reasons.

In addition, EOUSA stated that we did not explain why we did not accept that cases referred to the USAOs by the JTTFs were properly coded as anti-terrorism cases. EOUSA further stated that we determined that 13 of 21 sampled JTTF cases did not have an appropriate terrorism link, but that we did not identify the basis we used to make this judgment. Again, EOUSA is incorrect. We asked USAO and EOUSA officials for documentation of such

a terrorism link, and we accepted verbal explanations if they were offered. For the 13 sampled cases, no terrorism link was provided in writing or verbally by the USAOs or EOUSA other than the explanation that these cases were JTTF matters and therefore by their nature constituted terrorism-prevention cases. As explained previously, we do not accept this logic.

EOUSA also claimed that we failed to share with it case documentation we received from the USAOs to support findings that EOUSA reported cases in the proper year. This statement is also inaccurate. For each statistic we reviewed, we provided EOUSA a comprehensive listing showing whether the case was questioned because of a lack of a terrorism link, lack of documentation to show the case was appropriately included in the year reported, or both reasons. EOUSA staff did not provide support to prove that the cases we questioned were reported in the proper year.

Finally, EOUSA stated that the OIG failed to provide it with the information it needed to identify individual cases discussed in the report and therefore it was impossible for EOUSA to reply to the examples on a case-by-case basis. EOUSA's statement is incorrect. As previously noted, for every statistic we reviewed we provided EOUSA with a comprehensive listing showing the case and the reason it was questioned. Consequently, we believe that EOUSA had the information – as well as the time it needed – to research each case and determine whether our conclusions were accurate.

The status of the recommendations related to EOUSA statistics is presented in Section D of this appendix.

### **C. Criminal Division Response**

The Criminal Division also disagreed with our findings, although it concurred with each of our recommendations.

First, the Criminal Division argued that because it understated six of the nine statistics we reviewed, its numbers were fully “supported.” As we discussed in the analysis of EOUSA's response, we disagree with this argument. We believe it is unacceptable for the Criminal Division of the Department of Justice to provide inaccurate statistics describing its work, regardless of whether the numbers are under- or over-reported. However, as discussed previously, in order to avoid a non-productive disagreement about the accuracy of the word “supported” in this context, the OIG has changed its wording in the report to “inaccurate” statistics rather than “unsupported” statistics.



Second, the Criminal Division's response stated that it takes issue with the OIG's conclusion that the Criminal Division did not have an effective reporting system. It stated that "While we concede that the reported statistics have not been maintained according to audit standards and the supporting documentation was therefore not readily available, the fact that this data could be successfully reconstructed actually demonstrated that there were systems in place, and that systems could effectively provide the basis for the reported numbers."

We disagree. We were not applying "audit standards" to the Criminal Division's statistical reporting systems. However, it is clear that the Criminal Division had inadequate internal controls on its reporting systems, considering the fact that it took the Criminal Division two tries at reconstruction over a 6-month period to provide support for its numbers. As described beginning on page 70 of this report, the Criminal Division initially could not produce documentation for the statistics we sought to test. Staff of the Criminal Division requested and were given time to reconstruct the records. When the first reconstruction effort failed, the Criminal Division requested and we allowed time for a second reconstruction effort.

The statistics reported continued to be inaccurate even after the Criminal Division's second attempt at reconstruction. While the numbers were understated after the second reconstruction, we believe that under-reporting numbers in official statistics also shows a troubling lack of internal controls on the Criminal Division's reporting systems.

With respect to the possibility of over-reporting its terrorism statistics, the Criminal Division argued that "we do not believe, given our system, that the Division could unintentionally report a terrorism-related matter that had no basis in fact." The Criminal Division then provided a lengthy discussion of the coordination and documentation used in terrorism cases. Yet, until it attempted to reconstruct support for its statistics, the Criminal Division had not monitored the terrorism-related statistics that we tested and in fact could not do so with the data available prior to the reconstructions. In addition, internal controls did not exist to validate the Criminal Division's statistics. Under these circumstances, we believe that inaccurate reporting in both directions is possible.

In fact, the Criminal Division's first reconstruction attempt indicated just the opposite. Specifically, the Criminal Division's first reconstruction included cases that were not supported by the facts and documentation for seven of the nine times that the five statistics were reported. For example, for statistic 2 on the number of individuals convicted or pleaded guilty resulting from terrorism investigations from September 11, 2001, through

February 3, 2005, the first reconstruction included three cases where the investigations had been vacated and therefore should not have been included on the list. When we met with Criminal Division officials to discuss these cases, the officials agreed that these cases should not have been included on the first reconstructed list and excluded the cases from the second reconstructed list. Had we accepted the Criminal Division's first reconstructed list, then the Criminal Division would have included cases not supported by the facts, contrary to its assertion that this could not occur.

We also disagree with the Criminal Division's reference to audit standards. We did not apply audit standards to the Criminal Division's responsibility to provide accurate statistics. Rather, the auditing standards to which the Criminal Division refers are broad statements of auditors' responsibilities and provide a framework for the conduct of audit work.<sup>64</sup> These auditing standards apply to work of government auditors, not the work of Criminal Division managers. However, Criminal Division managers (like other government managers) should be held to standards requiring that significant events be clearly documented, that such documentation be readily available for examination, and that statistics be monitored, validated, and accurate. The Criminal Division's difficulty in reconstructing support for its numbers, and the ultimate inaccuracy of those numbers compared to what it reported, does not show compliance with the standards to which all managers should be held.

The Criminal Division also stated that the OIG report contains inaccurate and potentially misleading statements. We disagree with the Criminal Division and discuss below each of its concerns individually. First, the Criminal Division stated that "Repeated statements that the Criminal Division statistics were 'inaccurate' and 'flawed'... will likely lead readers to infer that the statistics were inflated." We carefully wrote our report to demonstrate both graphically and in the text the extent to which the Criminal Division inaccurately reported its statistics by either under-reporting or over-reporting. We believe that our description of the Criminal Division's statistics as both inaccurate and flawed is correct.

Second, the Criminal Division noted that we identified broad causes for inaccurate statistics, including that the departmental components we reviewed: (1) could not provide support for the numbers reported for the statistics; (2) could not provide support for the terrorism link used to classify statistics as terrorism-related; and (3) could not provide documentation to show that some items counted in the statistic reported occurred in the

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<sup>64</sup> General Accounting office, *Government Auditing Standards*, GAO-03-673G, June 2003.

period reported or the provided evidence showed that some items counted in the statistic reported did not occur in the period reported. The Criminal Division argued that none of these explanations pertained to its statistics.

That is not correct. As noted above, the Criminal Division's reconstructed documentation did not support the statistics it reported because they were inaccurately understated. Yet, even beyond the dispute about the term "support," it is clear that the Criminal Division's statistics included items that were included in the wrong period. On page 73 of the report we summarized the Criminal Division's transactions that we tested which did not occur during the reporting period and therefore should not have been included in this reporting period. While these numbers are small and we characterize them as such in the report, this deficiency applies to the Criminal Division's statistics as well as to the other Department components.

Third, the Criminal Division objected to our explanation regarding how it had to reconstruct the required support for its statistics, and it noted that it provided us with assistance in understanding the information. The Criminal Division concluded that "A full understanding of the audit and reconciliation process must credit the efforts by the Counterterrorism Section to supply the OIG with all the materials they requested and educate them on each criminal investigation and prosecution so that they could properly evaluate those materials in the context of the audit." We agree that Criminal Division staff provided us with requested materials and worked with us to ensure our proper understanding of those materials. While we appreciate these efforts (and similar efforts of the FBI and EOUSA), we view these efforts to be part of the Department's routine compliance with the information and assistance provisions of the Inspector General Act.<sup>65</sup> Such interactions are common and are crucial to properly evaluate the wide range of Departmental activities covered by our audits. That said, we believe that the difficult and time consuming reconstruction process required by the Criminal Division was a significant issue and is noteworthy of mention in the OIG's report.

The status of the recommendations related to Criminal Division statistics is presented in Section D of this appendix.

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<sup>65</sup> See 5 U.S.C. §6 *Authority of Inspector General; information and assistance from Federal agencies*;

## **D. Status of Recommendations**

1. This recommendation was directed to the FBI, EOUSA, and Criminal Division to establish and document internal control procedures for gathering, verifying, and reporting terrorism-related statistics.

**FBI: Resolved.** The FBI generally agreed with the recommendation but noted concerns about our analysis of terrorism-related convictions. Those concerns are discussed in Section A of this appendix. However, the FBI stated that it has improved oversight at FBI Headquarters and enhanced policy guidance to strengthen its internal controls, which will limit the improper reporting of terrorism-related statistics in the future. This recommendation can be closed when we receive documentation of the FBI's enhanced policy guidance to strengthen its internal controls for gathering, verifying, and reporting terrorism-related statistics.

**EOUSA: Unresolved.** EOUSA stated that it agrees with the recommendation but believes that it is already complying with it. EOUSA's response reiterated the five tools that we explained in the report it uses to ensure that the LIONS data is correct. However, as we also explained in the report, the USAOs are only required to use one of the five tools – the United States Attorneys' semi-annual self-certification that the LIONS data is complete and accurate. EOUSA only suggested that the USAOs use the other four tools (case certifications by events tool, Alcatraz Case Certification report, AUSA workload reports, and Alternate District Reporting Method). EOUSA's response also provided no data to indicate the extent to which the USAOs use these suggested tools to ensure the accuracy of LIONS data. In addition, EOUSA stated that the primary cause of the differences we questioned is our interpretation of EOUSA's definition for its anti-terrorism code, and the differences were not the result of failures of controls EOUSA has in place.

As discussed above, that is not correct. Some of the differences we questioned were related to the anti-terrorism code, but EOUSA's statistics were still inaccurate apart from that issue. Moreover, we also found four statistics for which EOUSA stated that it had established controls but the controls were not documented. EOUSA's response did not address this issue. Therefore, we do not agree that EOUSA has already complied with this recommendation. This recommendation can be closed when we receive documentation showing that EOUSA has established and documented internal control procedures for gathering, verifying, and reporting terrorism-related statistics.

**Criminal Division: Unresolved.** The Criminal Division concurred with the recommendation but stated that it had existing procedures for gathering, verifying, and reporting terrorism-related statistics in the form of the Counterterrorism Section's Circular on Terrorism Statistics and in material discussing specific performance measures. According to the Criminal Division, these mechanisms were supplemented by gathering information through telephone and e-mail requests and responses to and from terrorism prosecutors in the USAOs. The Criminal Division stated that it believes there was nothing haphazard about its system, which resulted in daily reporting of terrorism litigation events by which Department leadership is kept current on such matters.

As discussed above, we found the Criminal Division's procedures for gathering, verifying, and reporting terrorism-related statistics resulted in inaccurate statistics. The Criminal Division also did not have procedures detailing the sources it would use to gather each statistic or the methodologies it would use to verify the accuracy of those statistics. As a result, the Criminal Division spent considerable resources during two attempts to reconstruct the support for the statistics reported, and in the end was unable to reconcile the numbers reported for each statistic. As a result, this recommendation can be closed when we receive documentation showing the Criminal Division has established and documented internal control procedures for gathering, verifying, and reporting terrorism-related statistics.

2. This recommendation was directed to the FBI, EOUSA, and Criminal Division to maintain documentation to identify the source of all terrorism-related statistics reported in official operational documents such as budget requests, performance plans, statistical reports, and others.

**FBI: Resolved.** The FBI stated that it will establish a process of maintaining supporting documentation identifying the original source of terrorism-related statistics and that its Counterterrorism and Finance Divisions will work together to establish a formal process to maintain supporting documentation and establish appropriate record retention policy. This recommendation can be closed when we receive documentation of the FBI's process for maintaining documentation to identify the source of all terrorism-related statistics reported in official operational documents such as budget requests, performance plans, statistical reports, and others.

**EOUSA: Unresolved.** EOUSA responded that it already maintains documentation to identify the source of all terrorism-related statistics

and refers to its response to the first recommendation. As noted in our report, we identified 16 statistics for which the source of the statistics could not be identified. Four of these 16 statistics were reported in Attorney General Testimony and appeared to be statistics that may have been collected by EOUSA or USAOs. Therefore, we believe that EOUSA needs to maintain documentation to identify the source of all statistics, even those reported in non-EOUSA documents but originating with EOUSA. This recommendation can be closed when we receive documentation showing EOUSA's plans to maintain documentation to identify the source of all terrorism-related statistics reported in official operational documents such as budget requests, performance plans, statistical reports, and others.

**Criminal Division: Resolved.** The Criminal Division concurred with the recommendation and said it intends to maintain documentation in a more readily available manner to identify the source of the statistics it reports. This recommendation can be closed when we receive documentation showing how the Criminal Division plans to maintain documentation to identify the source of the terrorism-related statistics it reports.

3. This recommendation was directed to the FBI, EOUSA, and Criminal Division to maintain documentation of the procedures and systems used to gather or track the statistics reported.

**FBI: Resolved.** The FBI stated that its Counterterrorism and Finance Divisions will establish a process to maintain supporting documentation that will provide an audit trail on the systems utilized and any unique procedures followed to accumulate the data. This recommendation can be closed when we receive documentation showing the FBI's process to maintain documentation of the procedures and systems used to gather or track the statistics it reports.

**EOUSA: Unresolved.** EOUSA responded that it already maintains documentation of the procedures and systems used to gather or track the statistics it reports and referred to its response to the first recommendation. As discussed in our analysis of EOUSA's response to Recommendation 2, because EOUSA provides statistics for use in other documents or speeches, such as Attorney General Testimony, it should maintain documentation of the procedures and systems used to report such statistics. This recommendation can be closed when we receive documentation showing EOUSA's plans to maintain documentation of the procedures and systems used to gather or track the statistics it reports.

**Criminal Division: Resolved.** The Criminal Division concurred with the recommendation and said it intends to maintain documentation of the procedures and systems used to gather or track the statistics it reports. This recommendation can be closed when we receive documentation showing how the Criminal Division plans to maintain documentation of the procedures and systems used to gather or track the statistics it reports.

4. This recommendation was directed to the FBI, EOUSA, and Criminal Division to maintain documentation of the methodologies and procedures used to verify the accuracy of the statistics reported.

**FBI: Resolved.** The FBI stated that documentation of the methodologies and procedures used to verify the accuracy of statistics rests with the entities that have program oversight of the systems that capture the data. The FBI further stated that much of the process for reviewing statistic accuracy centers on trend analyses conducted in the field and at FBI Headquarters and the FBI plans to continue this process. The FBI also stated that one internal control it uses to verify the accuracy of statistics is its inspection process which has identified shortcomings in various statistical accomplishments. While these controls are beneficial to improving the accuracy of reported statistics, the controls alone were not sufficient to prevent the improper reporting of statistics that we identified in this report. Therefore, we believe the FBI needs additional controls to verify the accuracy of its terrorism statistics. This recommendation can be closed when we receive documentation showing the FBI's additional methodologies and procedures used to verify the accuracy of the statistics it reports.

**EOUSA: Unresolved.** EOUSA responded that it already maintains documentation of the methodologies and procedures used to verify the accuracy of the statistics it reports and refers to its response to the first recommendation. As discussed in our analysis of EOUSA's response to Recommendation 1, EOUSA's statistics were inaccurate even apart from the issue related to the definition of its anti-terrorism code. Moreover, we also found four statistics for which EOUSA stated that it had established controls but the controls were not documented. EOUSA's response did not address this issue. Therefore, we do not agree that EOUSA has already complied with this recommendation and believe EOUSA should maintain documentation of the methodologies and procedures used to verify the accuracy of its statistics. This recommendation can be closed when we receive documentation showing EOUSA's plans to maintain documentation of the methodologies and procedures used to verify the accuracy of the statistics it reports.

**Criminal Division: Resolved.** The Criminal Division concurred with the recommendation and intends to rely primarily on the methodologies and procedures set forth in the recently updated Circular on Terrorism Statistics. The Criminal Division will also use the additional systems described above as back-up for the international terrorism and terrorism-related cases database. This recommendation can be closed when we receive documentation showing how the Criminal Division plans to verify the accuracy of the statistics it reports.

5. This recommendation directed to the FBI, EOUSA, and Criminal Division to ensure that terrorism-related statistics are not reported unless evidence is maintained to support the statistics.

**FBI: Resolved.** The FBI agreed with this recommendation and stated that it is the basic premise of statistical reporting. The FBI stated that it will not report statistics which cannot be supported. This recommendation can be closed when we receive documentation showing how the FBI plans to ensure that terrorism-related statistics are not reported unless evidence is maintained to support the statistics.

**EOUSA: Unresolved.** EOUSA responded that this recommendation is the basic premise of any statistical reporting and that EOUSA fully agrees with it. However, as noted in the report, we found that EOUSA could not provide a listing from its LIONS system to match the numbers reported for 4 of its 11 statistics. Moreover, we also found four statistics for which EOUSA stated that it had established controls but the controls were not documented. However, EOUSA did not address this issue in its response. Therefore, we do not agree that EOUSA has adequately addressed this recommendation. This recommendation can be closed when we receive documentation showing EOUSA's plans to ensure that terrorism-related statistics are not reported unless evidence is maintained to support the statistics.

**Criminal Division: Resolved.** The Criminal Division concurred with the recommendation and agrees that terrorism-related statistics should not be reported unless evidence is maintained to support the statistics. This recommendation can be closed when we receive documentation showing how the Criminal Division plans to maintain documentation of the procedures and systems used to gather or track the statistics it reports.

6. This recommendation was directed to EOUSA to establish and implement procedures to recode transactions in the LIONS system when



investigations that began as terrorism-related investigations do not link the case to terrorist activity.

**EOUSA: Unresolved.** EOUSA agreed that a case should be recoded if it changes over the course of its investigation and it would be inaccurate to report the case under the code it was originally reported under. However, EOUSA commented that it does not see such situations arising very often. EOUSA also stated that cases brought as part of an operation to prevent terrorism are properly coded as anti-terrorism. However, EOUSA said it plans to modify and clarify its anti-terrorism code definition to eliminate any confusion as to its meaning.

As discussed above, we disagree with EOUSA's analysis of this issue. Simply reporting the results of prevention operations as anti-terrorism in the Department's annual budgets without explaining that the majority of the subjects had no ties to terrorist activity and were arrested for immigration violations or identity theft does not clearly and fairly characterize these operations. This recommendation can be closed when we receive documentation showing EOUSA has established and implemented procedures to clarify in the LIONS system the type of cases included in the anti-terrorism category, and to clarify what these statistics represent.